

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 666

By: Sykes

4
5
6 AS INTRODUCED

7 An Act relating to civil procedure; requiring
8 appointment of attorney for specified purpose;
9 providing for award of certain fees; requiring
10 plaintiff to attach certain affidavit in civil action
11 for negligence; providing requirements for Oklahoma
12 Uniform Jury Instructions; amending 12 O.S. 2001,
13 Section 588, which relates to general and specific
14 findings; modifying procedure; amending 12 O.S. 2001,
15 Section 684, as amended by Section 4, Chapter 368,
16 O.S.L. 2004 (12 O.S. Supp. 2008, Section 684), which
17 relates to dismissal; modifying procedure for
18 dismissal without court order; providing for
19 dismissal of action under certain circumstances;
20 stating requirements for expert opinions; allowing
21 for extension under certain circumstances; requiring
22 plaintiff to provide certain information; amending
23 Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp.
24 2008, Section 727.1), which relates to interest on
judgments; modifying time of accrual of prejudgment
interest on certain actions; modifying method of
computing interest; amending 12 O.S. 2001, Sections
990.4, as last amended by Section 6, Chapter 1,
O.S.L. 2005, 2004, as amended by Section 7, Chapter
402, O.S.L. 2002, 2011, as amended by Section 10,
Chapter 368, O.S.L. 2004, Section 1, Chapter 370,
O.S.L. 2004, as amended by Section 10, Chapter 12,
O.S.L. 2007, 2023 and 2702 (12 O.S. Supp. 2008,
Sections 990.4, 2004, 2011 and 2011.1), which relate
to stays of enforcement, the Oklahoma Pleading Code,
frivolous claims or defenses, class actions and
expert testimony; modifying certain appeal bond
procedures; modifying time limit for service of
process; modifying definitions; providing procedure
for summary judgment; requiring potential class
members to request inclusion in the class; providing

1 procedure for summary judgment; providing
2 requirements for expert testimony; providing role of
3 the court; providing for interpretation; amending 23
4 O.S. 2001, Sections 9.1, as amended by Section 1,
5 Chapter 462, O.S.L. 2002, and Section 18, Chapter
6 368, O.S.L. 2004 and 61 (23 O.S. Supp. 2008, Sections
7 9.1 and 15), which relate to punitive damages, joint
8 and several liability and obligations not arising
9 from contract; providing for punitive damage awards
10 for certain actions; providing for periodic payment
11 of certain damages; modifying exceptions to
12 severability; providing limits of liability for
13 noneconomic damages for certain actions; requiring
14 certain adjustment; defining term; requiring
15 admission of evidence of certain compensation;
16 limiting award of certain damages; providing
17 exception; defining term; providing that proof of
18 certain losses must be in the form of a net loss
19 after reduction for income tax payments or unpaid tax
20 liability; amending 47 O.S. 2001, Section 11-1112, as
21 last amended by Section 1, Chapter 361, O.S.L. 2005
22 (47 O.S. Supp. 2008, Section 11-1112), which relates
23 to child passenger restraint systems; eliminating
24 prohibitions against admissibility of certain
evidence in civil actions; amending Section 7,
Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Section
1-1708.1G), which relates to prejudgment interest for
medical liability actions; providing time that
prejudgment interest accrues; amending 63 O.S. 2001,
Section 1-1709.1, as last amended by Section 2,
Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2008, Section
1-1709.1), which relates to peer review information;
providing that certain information is not subject to
discovery or admissible at trial; requiring certain
findings for certain information to be admissible;
stating legislative findings; defining terms;
providing for confidentiality of certain records;
prohibiting certain testimony; limiting liability of
certain persons; prohibiting submission of certain
information into evidence; creating the School
Protection Act; providing short title; stating
purpose of the act; making it unlawful to make a
false criminal report against an education employee;
providing punishment; limiting application for
statements against certain persons; providing for
effect on other laws; providing that existence of
liability insurance is not a waiver of any defense;

1 providing for the applicability of other laws;
2 amending 51 O.S. 2001, Section 155, as last amended
3 by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.
4 2008, Section 155), which relates to exemptions from
5 liability; adding certain exemptions; amending 76
6 O.S. 2001, Sections 5.5, 25 and 31 and Section 34,
7 Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008, Section
8 32), which relate to limitations for certain actions,
9 professional review bodies, civil immunity for
10 volunteers, charitable organizations, not-for-profit
11 corporations and volunteer medical professionals;
12 establishing a statute of repose for certain actions;
13 providing that peer review information is private,
14 confidential and privileged; providing exception;
15 providing notice requirement; providing that certain
16 information is not subject to discovery or admissible
17 at trial; prohibiting testimony by certain persons;
18 modifying definition; expanding immunity for
19 volunteer medical professionals; creating the Common
20 Sense Consumption Act; providing short title; stating
21 legislative intent; defining terms; providing
22 immunity from civil liability for certain claims;
23 providing exception; providing pleading requirements;
24 providing for stay of discovery and other proceedings
in certain circumstances; providing scope of claims
covered; stating legislative findings; limiting
liability of certain manufacturers; limiting
liability of certain associations; clarifying
applicability of certain provisions; repealing 47
O.S. 2001, Section 12-420, as amended by Section 13,
Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008, Section
12-420), which relates to inadmissibility of evidence
in civil actions of failure to use seatbelt;
repealing Section 6, Chapter 390, O.S.L. 2003, as
amended by Section 21, Chapter 368, O.S.L. 2004 and
Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp.
2008, Sections 1-1708.1F and 1-1708.1F-1), which
relate to limits on noneconomic damages in medical
liability actions; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7.2 of Title 5, unless there is
3 created a duplication in numbering, reads as follows:

4 In class actions, if a request for an award of attorney fees is
5 made, the court shall appoint an attorney to represent the class
6 upon request by any members of the class in a hearing on the issue
7 of the amount of attorney fees only. Said attorney shall be
8 independent of the attorney or attorneys seeking attorney fees in
9 the class action, and said independent attorney shall be awarded
10 reasonable fees by the court on an hourly basis out of the proceeds
11 awarded to the class.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 191 of Title 12, unless there is
14 created a duplication in numbering, reads as follows:

15 A. 1. In any action not arising out of contract, wherein the
16 party intends or is required by law to use a qualified expert to
17 prove liability, except as provided in subsection B of this section,
18 the party shall file within sixty (60) days of filing the petition
19 an affidavit attesting that:

- 20 a. the party has consulted and reviewed the facts of the
21 claim with a qualified expert,
- 22 b. the party has obtained a written opinion from a
23 qualified expert that clearly identifies the party and
24 includes the expert's determination that, based upon a

1 review of the pertinent records, facts or other
2 relevant material, a reasonable interpretation of the
3 facts supports a finding of liability of the adverse
4 party against whom the action is brought, and

5 c. on the basis of the qualified expert's review and
6 consultation, the party has concluded that the claim
7 is meritorious and based on good cause.

8 2. If the civil action is filed:

9 a. without an affidavit being attached to the petition,
10 as required in paragraph 1 of this subsection, and

11 b. no extension of time is subsequently granted by the
12 court, pursuant to subsection B of this section,

13 the court shall, upon motion of the adverse party, dismiss the
14 action.

15 3. The written opinion from the qualified expert shall state
16 the acts or omissions of the adverse party or parties that the
17 expert then believes establish liability and shall include reasons
18 explaining why the acts or omissions establish such liability.

19 B. 1. The court may, upon application of the party for good
20 cause shown, grant the party an extension of time, not exceeding
21 ninety (90) days after the date the petition is filed, to file in
22 the action an affidavit attesting that the party has obtained a
23 written opinion from a qualified expert as described in paragraph 1
24 of subsection A of this section.

1 2. If on the expiration of an extension period described in
2 paragraph 1 of this subsection, the party has failed to file in the
3 action an affidavit as described above, the court shall, upon motion
4 of the adverse party, unless good cause is shown for such failure,
5 dismiss the action without prejudice to its refiling.

6 C. 1. Upon written request of any adverse party in any action
7 not arising out of contract, the party shall, within ten (10)
8 business days after receipt of such request, provide the adverse
9 party with:

10 a. a copy of the written opinion of a qualified expert
11 mentioned in an affidavit filed pursuant to subsection
12 A or B of this section, and

13 b. where applicable, an authorization from the party in a
14 form that complies with applicable state and federal
15 laws, including the Health Insurance Portability and
16 Accountability Act of 1996, for the release of any and
17 all medical records and bills related to the party for
18 a period commencing ten (10) years prior to the
19 incident that is at issue.

20 2. If the party fails to comply with paragraph 1 of this
21 subsection, the court shall, upon motion of the adverse party,
22 unless good cause is shown for such failure, dismiss the action.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 577.4 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 The Oklahoma Uniform Jury Instructions (OUJI) applicable in a
5 civil case shall include an instruction notifying the jury that no
6 part of an award for damages for personal injury or wrongful death
7 is subject to federal or state income tax. Any amount that the jury
8 determines to be proper compensation for personal injury or wrongful
9 death should not be increased or decreased by any consideration for
10 income taxes.

11 SECTION 4. AMENDATORY 12 O.S. 2001, Section 588, is
12 amended to read as follows:

13 Section 588. In all cases the jury shall render a general
14 verdict, ~~and the court may in any case at the request of~~ unless the
15 parties thereto, or either of them shall have requested, in addition
16 to the general verdict, ~~direct that~~ the jury to find upon particular
17 questions of fact, to be stated in writing by the party or parties
18 requesting the same. Upon receipt of a request for a finding upon
19 particular questions of fact, the court shall so direct the jury.

20 SECTION 5. AMENDATORY 12 O.S. 2001, Section 684, as
21 amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
22 Section 684), is amended to read as follows:

23 Section 684. A. ~~Except as provided in Section 5 of this act,~~
24 an An action may be dismissed ~~on the payment of costs and by the~~

1 ~~plaintiff without an order of court by the plaintiff filing a notice~~
2 ~~of dismissal at any time before a petition of intervention or answer~~
3 ~~praying for affirmative relief against the plaintiff is filed in the~~
4 ~~action. A plaintiff may, at any time before the trial is commenced,~~
5 ~~on payment of the costs and without any order of court, dismiss the~~
6 ~~action after the filing of a petition of intervention or answer~~
7 ~~praying for affirmative relief, but such dismissal shall not~~
8 ~~prejudice the right of the intervenor or defendant to proceed with~~
9 ~~the action. Any defendant or intervenor may, in like manner,~~
10 ~~dismiss an action against the plaintiff, without an order of court,~~
11 ~~at any time before the trial is begun, on payment of the costs made~~
12 ~~on the claim filed by the defendant or intervenor. All parties to a~~
13 ~~civil action may at any time before trial, without an order of~~
14 ~~court, and on payment of costs, by agreement, dismiss the action.~~

15 ~~B. Such dismissal shall be in writing and signed by the party~~
16 ~~or the attorney for the party, and shall be filed with the clerk of~~
17 ~~the district court where the action is pending, who shall note the~~
18 ~~fact on the proper record: Provided, such dismissal shall be held to~~
19 ~~be without prejudice, unless the words "with prejudice" be expressed~~
20 ~~therein.~~

21 ~~C. When an action is dismissed after a jury in the action is~~
22 ~~empanelled and the case is subsequently refiled, the court, at the~~
23 ~~conclusion of the subsequent action, may assess costs and attorney~~
24 ~~fees incurred in the previous action by the defendants subsequent to~~

1 the jury being empanelled service by the adverse party of an answer
2 or of a motion for summary judgment, whichever first occurs, or by
3 filing a stipulation for dismissal signed by all parties who have
4 appeared in the action; provided, if a plaintiff files a notice of
5 dismissal after discovery has commenced, any such action shall not
6 be dismissed without prejudice without the consent of the defendant.
7 Unless otherwise stated in the notice of dismissal or stipulation,
8 the dismissal is without prejudice, except that a notice of
9 dismissal operates as an adjudication upon the merits when filed by
10 a plaintiff who has once dismissed in any court of the United States
11 or of any state an action based on or including the same claim.

12 B. Except as provided in subsection A of this section, an
13 action shall not be dismissed at the plaintiff's instance except
14 upon order of the court and upon such terms and conditions as the
15 court deems proper. If a counterclaim has been pleaded by a
16 defendant prior to the service upon the defendant of the plaintiff's
17 motion to dismiss, the action shall not be dismissed against the
18 defendant's objection unless the counterclaims can remain pending
19 for independent adjudication by the court. Unless otherwise
20 specified in the order, a dismissal under this subsection is without
21 prejudice.

22 C. For failure of the plaintiff to prosecute or to comply with
23 the provisions of this section or any order of court, a defendant
24 may move for dismissal of an action or of any claim against the

1 defendant. Unless the court in its order for dismissal otherwise
2 specifies, a dismissal under this subsection and any dismissal not
3 provided for in this section, other than a dismissal for lack of
4 jurisdiction, for improper venue, or for failure to join a party,
5 operates as an adjudication upon the merits.

6 D. The provisions of this section apply to the dismissal of any
7 counterclaim, cross-claim, or third-party claim. A voluntary
8 dismissal by the claimant alone pursuant to subsection A of this
9 section shall be made before a responsive pleading is served or, if
10 there is none, before the introduction of evidence at the trial or
11 hearing.

12 If a plaintiff who has once dismissed an action in any court
13 commences an action based upon or including the same claim against
14 the same defendant, the court may make such order for the payment of
15 costs of the action previously dismissed as it may deem proper and
16 may stay the proceedings in the action until the plaintiff has
17 complied with the order. If an action is refiled and the plaintiff
18 does not comply with the time limits for service required by
19 subsection I of Section 2004 of this title, the action shall be
20 dismissed with prejudice.

21 SECTION 6. AMENDATORY Section 7, Chapter 368, O.S.L.
22 2004 (12 O.S. Supp. 2008, Section 727.1), is amended to read as
23 follows:

24 Section 727.1

1 POSTJUDGMENT INTEREST

2 A. 1. Except as otherwise provided by this section, all
3 judgments of courts of record, including costs and attorney fees
4 authorized by statute or otherwise and allowed by the court, shall
5 bear interest at a rate prescribed pursuant to this section.

6 2. Costs and attorney fees allowed by the court shall bear
7 interest from the earlier of the date the judgment or order is
8 pronounced, if expressly stated in the written judgment or order
9 awarding the costs and attorney fees, or the date the judgment or
10 order is filed with the court clerk.

11 B. Judgments, including costs and attorney fees authorized by
12 statute or otherwise and allowed by the court, against this state or
13 its political subdivisions, including counties, municipalities,
14 school districts, and public trusts of which this state or a
15 political subdivision of this state is a beneficiary, shall bear
16 interest during the term of judgment at a rate prescribed pursuant
17 to this section from the date of rendition. No judgment against
18 this state or its political subdivisions, including counties,
19 municipalities, school districts, and public trusts of which this
20 state or a political subdivision of this state is a beneficiary,
21 inclusive of postjudgment interest, shall exceed the total amount of
22 liability of the governmental entity pursuant to The Governmental
23 Tort Claims Act.

1 C. The postjudgment interest authorized by subsection A or
2 subsection B of this section shall accrue from the earlier of the
3 date the judgment is rendered as expressly stated in the judgment,
4 or the date the judgment is filed with the court clerk, and shall
5 initially accrue at the rate in effect for the calendar year during
6 which the judgment is rendered until the end of the calendar year in
7 which the judgment was rendered, or until the judgment is paid,
8 whichever first occurs. Beginning on January 1 of the next
9 succeeding calendar year until the end of that calendar year, or
10 until the judgment is paid, whichever first occurs, the judgment,
11 together with postjudgment interest previously accrued, shall bear
12 interest at the rate in effect for judgments rendered during that
13 calendar year as certified by the Administrative Director of the
14 Courts pursuant to subsection I of this section. For each
15 succeeding calendar year, or part of a calendar year, during which a
16 judgment remains unpaid, the judgment, together with postjudgment
17 interest previously accrued, shall bear interest at the rate in
18 effect for judgments rendered during that calendar year as certified
19 by the Administrative Director of the Courts pursuant to subsection
20 I of this section. A separate computation using the interest rate
21 in effect for judgments as provided by subsection I of this section
22 shall be made for each calendar year, or part of a calendar year,
23 during which the judgment remains unpaid in order to determine the
24 total amount of interest for which the judgment debtor is liable.

1 The postjudgment interest rate for each calendar year or part of a
2 calendar year a judgment remains unpaid shall be multiplied by the
3 original amount of the judgment, including any prejudgment interest,
4 together with postjudgment interest previously accrued. Interest
5 shall accrue on a judgment in the manner prescribed by this
6 subsection until the judgment is satisfied or released.

7 D. If a rate of interest is specified in a contract, the rate
8 specified shall apply and be stated in the journal entry of
9 judgment. The rate of interest shall not exceed the lawful rate for
10 that obligation. Postjudgment interest shall be calculated and
11 accrued in the same manner as prescribed in subsection C of this
12 section.

13 PREJUDGMENT INTEREST

14 E. Except as provided by subsection F of this section ~~or~~
15 ~~Section 1-1708.1G of Title 63 of the Oklahoma Statutes, beginning~~
16 November 1, 2009, if a verdict for damages by reason of personal
17 injuries or injury to personal rights including, but not limited to,
18 injury resulting from bodily restraint, personal insult, defamation,
19 invasion of privacy, injury to personal relations, or detriment due
20 to an act or omission of another is accepted by the trial court, the
21 court in rendering judgment shall add interest on the verdict at a
22 rate prescribed pursuant to subsection I of this section from the
23 date which is thirty-six (36) months after the suit resulting in the
24 judgment was commenced to the earlier of the date the verdict is

1 | accepted by the trial court as expressly stated in the judgment, or
2 | the date the judgment is filed with the court clerk. No prejudgment
3 | interest shall begin to accrue until thirty-six (36) months after
4 | the suit resulting in the judgment was commenced. The interest rate
5 | for computation of prejudgment interest shall begin with the rate
6 | prescribed by subsection I of this section which is in effect for
7 | the calendar year ~~in~~ which is thirty-six (36) months after the suit
8 | resulting in the judgment ~~is~~ was commenced. This rate shall be in
9 | effect until the end of the calendar year in which ~~the suit~~
10 | ~~resulting in judgment was filed~~ interest begins to accrue or until
11 | the date judgment is filed, whichever first occurs. Beginning on
12 | January 1 of the next succeeding calendar year until the end of that
13 | calendar year, or until the date the judgment is filed, whichever
14 | first occurs, and for each succeeding calendar year thereafter, the
15 | prejudgment interest rate shall be the rate in effect for judgments
16 | rendered during each calendar year as certified by the
17 | Administrative Director of the Courts pursuant to subsection I of
18 | this section. After the computation of all prejudgment interest has
19 | been completed, the total amount of prejudgment interest shall be
20 | added to the amount of the judgment rendered pursuant to the trial
21 | of the action, and the total amount of the resulting judgment shall
22 | become the amount upon which postjudgment interest is computed
23 | pursuant to subsection A of this section.

24

1 F. If a verdict of the type described by subsection E of this
2 section is rendered against this state or its political
3 subdivisions, including counties, municipalities, school districts,
4 and public trusts of which this state or a political subdivision of
5 this state is a beneficiary, the judgment shall bear interest at the
6 rate prescribed pursuant to subsection I of this section from the
7 date the suit was commenced to the earlier of the date the verdict
8 is accepted by the trial court as expressly stated in the judgment
9 or the date the judgment is filed with the court clerk. The
10 interest rate for computation of prejudgment interest shall begin
11 with the rate prescribed by subsection I of this section which is in
12 effect for the calendar year in which the suit resulting in the
13 judgment is commenced. This rate shall be in effect until the end
14 of the calendar year in which the suit resulting in judgment was
15 filed or until the date the judgment is rendered as expressly stated
16 in the judgment, whichever first occurs. Beginning on January 1 of
17 the next succeeding calendar year until the end of that calendar
18 year, or until the date judgment is rendered, whichever first
19 occurs, and for each succeeding calendar year thereafter, the
20 prejudgment interest rate shall be the rate in effect for judgments
21 rendered during each calendar year as certified by the
22 Administrative Director of the Courts pursuant to subsection I of
23 this section. After the computation of prejudgment interest has
24 been completed, the amount shall be added to the amount of the

1 judgment rendered pursuant to the trial of the action, and the total
2 amount of the resulting judgment shall become the amount upon which
3 postjudgment interest is computed pursuant to subsection B of this
4 section. No award of prejudgment interest against this state or its
5 political subdivisions, including counties, municipalities, school
6 districts, and public trusts of which this state or a political
7 subdivision of this state is a beneficiary, including the amount of
8 the judgment awarded pursuant to trial of the action, shall exceed
9 the total amount of liability of the governmental entity pursuant to
10 The Governmental Tort Claims Act.

11 G. If exemplary or punitive damages are awarded in an action
12 for personal injury or injury to personal rights including, but not
13 limited to, injury resulting from bodily restraint, personal insult,
14 defamation, invasion of privacy, injury to personal relations, or
15 detriment due to an act or omission of another, the interest on
16 that award shall begin to accrue from the earlier of the date the
17 judgment is rendered as expressly stated in the judgment, or the
18 date the judgment is filed with the court clerk.

19 H. If a judgment is rendered establishing the existence of a
20 lien against property and no rate of interest exists, the court
21 shall allow prejudgment interest at a rate prescribed pursuant to
22 subsection I of this section from the date the lien is filed to the
23 date of verdict.

24

1 I. For purposes of computing either postjudgment interest or
2 prejudgment interest as authorized by this section, interest shall
3 be ~~the prime rate, as listed in the first edition of the Wall Street~~
4 ~~Journal published for each calendar year and as certified to the~~
5 ~~Administrative Director of the Courts by the State Treasurer on the~~
6 ~~first regular business day following publication in January of each~~
7 ~~year, plus two percent (2%)~~ determined using a rate equal to the
8 average United States Treasury Bill rate of the preceding calendar
9 year as certified to the Administrative Director of the Courts by
10 the State Treasurer on the first regular business day in January of
11 each year.

12 J. For purposes of computing postjudgment interest, the
13 provisions of this section shall be applicable to all judgments of
14 the district courts rendered on or after January 1, ~~2005~~ 2010.
15 Effective January 1, ~~2005~~ 2010, the method for computing
16 postjudgment interest prescribed by this section shall be applicable
17 to all judgments remaining unpaid rendered prior to January 1, ~~2005~~
18 2010.

19 K. For purposes of computing prejudgment interest, the
20 provisions of this section shall be applicable to all actions which
21 are filed in the district courts on or after January 1, ~~2005~~ 2010,
22 for which an award of prejudgment interest is authorized by the
23 provisions of this section.

24

1 SECTION 7. AMENDATORY 12 O.S. 2001, Section 990.4, as
2 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.
3 2008, Section 990.4), is amended to read as follows:

4 Section 990.4 A. Except as provided in subsection C of this
5 section, a party may obtain a stay of the enforcement of a judgment,
6 decree or final order:

7 1. While a post-trial motion is pending;

8 2. During the time in which an appeal may be commenced in any
9 court in or outside of this state; or

10 3. While an appeal is pending in any court in or outside of
11 this state.

12 Such stay may be obtained by filing with the court clerk a written
13 undertaking and the posting of a supersedeas bond or other security
14 as provided in this section. In the undertaking the appellant shall
15 agree to satisfy the judgment, decree or final order, and pay the
16 costs and interest on appeal, if it is affirmed. The undertaking
17 and supersedeas bond or security may be given at any time. The stay
18 is effective when the bond and the sufficiency of the sureties are
19 approved by the trial court or the security is deposited with the
20 court clerk. The enforcement of the judgment, decree or order shall
21 no longer be stayed, and the judgment, decree or order may be
22 enforced against any surety on the bond or other security:

23 1. If neither a post-trial motion nor a petition in error is
24 filed, and the time for appeal has expired;

1 2. If a post-trial motion is no longer pending, no petition in
2 error has been filed, and the time for appeal has expired; or

3 3. If an appeal is no longer pending.

4 B. The amount of the bond or other security shall be as
5 follows:

6 1. When the judgment, decree or final order is for payment of
7 money:

8 a. subject to the limitations hereinafter provided, the
9 bond shall be double the amount of the judgment,
10 decree or final order, unless the bond is executed or
11 guaranteed by a surety as hereinafter provided. The
12 bond shall be for the amount of the judgment, decree
13 or order including costs and interest on appeal where
14 it is executed or guaranteed by an entity with
15 suretyship powers as provided by the laws of Oklahoma.
16 In no case shall the bond exceed Twenty-five Million
17 Dollars (\$25,000,000.00). If the party posting the
18 supersedeas bond is an individual or a business with
19 two hundred fifty (250) employees or less on the date
20 of the judgment, the supersedeas bond shall not exceed
21 One Million Dollars (\$1,000,000.00). On a showing by
22 the judgment debtor that the judgment debtor is likely
23 to suffer substantial economic harm if required to
24 post bond in the amount required by this paragraph,

1 the court shall balance the likely substantial
2 economic harm to the judgment debtor with the ability
3 of the judgment creditor to collect the judgment in
4 the event the judgment is affirmed on appeal and may
5 lower the bond accordingly. "Substantial economic
6 harm" means insolvency or creating a significant risk
7 of insolvency. ~~The court shall not lower a bond as
8 provided in this paragraph to the extent there is in
9 effect an insurance policy, or agreement under which a
10 third party is liable to satisfy part or all of the
11 judgment entered and such party is required to post
12 all or part of the bond. Upon lowering the bond as
13 provided in this paragraph, the court shall enter an
14 order enjoining a judgment debtor from dissipating or
15 transferring assets to avoid satisfaction of the
16 judgment, but the court shall not make any order that
17 interferes with the judgment debtor's use of assets in
18 the normal course of business~~ If it is proved by a
19 preponderance of the evidence that the appellant for
20 whom the bond has been limited pursuant to this
21 subparagraph is intentionally dissipating or diverting
22 assets outside of the ordinary course of its business
23 for the purpose of avoiding payment of the judgment,
24 the court shall enter such orders as are necessary to

1 prevent dissipation or diversion including, but not
2 limited to, requiring that a bond be posted equal to
3 the full amount of security required pursuant to this
4 section, and

5 b. instead of filing a supersedeas bond, the appellant
6 may obtain a stay by depositing cash with the court
7 clerk in the amount of the judgment or order plus an
8 amount that the court determines will cover costs and
9 interest on appeal. The court shall have discretion
10 to accept United States Treasury notes or general
11 obligation bonds of the State of Oklahoma in lieu of
12 cash. If the court accepts such notes or bonds, it
13 shall make appropriate orders for their safekeeping
14 and maintenance during the stay;

15 2. When the judgment, decree or final order directs execution
16 of a conveyance or other instrument, the amount of the bond shall be
17 determined by the court. Instead of posting a supersedeas bond or
18 other security, the appellant may execute the conveyance or other
19 instrument and deliver it to the clerk of the court for deposit with
20 a public or private entity for safekeeping, as directed by the court
21 in writing;

22 3. When the judgment, decree or final order directs the
23 delivery of possession of real or personal property, the bond shall
24 be in an amount, to be determined by the court, that will protect

1 the interests of the parties. The court may consider the value of
2 the use of the property, any waste that may be committed on or to
3 the property during the pendency of the stay, the value of the
4 property, and all costs. When the judgment, decree or final order
5 is for the sale of mortgaged premises and the payment of a
6 deficiency arising from the sale, the bond must also provide for the
7 payment of the deficiency;

8 4. When the judgment or final order directs the assignment or
9 delivery of documents, they may be placed in the custody of the
10 clerk of the court in which the judgment or order was rendered, for
11 deposit with a public or private entity for safekeeping during the
12 pendency of the stay, as directed by the court in writing, or the
13 bond shall be in such sum as may be prescribed by the court; or

14 5. In order to protect any monies payable to the Tobacco
15 Settlement Fund as set forth in Section 50 of Title 62 of the
16 Oklahoma Statutes, the bond in any action or litigation brought
17 under any legal theory involving a signatory, successor of a
18 signatory or an affiliate of a signatory to the Master Settlement
19 Agreement dated November 23, 1998, or a signatory, successor of a
20 signatory or an affiliate of a signatory to the Smokeless Tobacco
21 Master Settlement Agreement, also dated November 23, 1998, shall be
22 in an amount not to exceed one hundred percent (100%) of the
23 judgment, exclusive of interest and costs, ten percent (10%) of the
24 net worth of the judgment debtor, or Twenty-five Million Dollars

1 (\$25,000,000.00), whichever is less. However, if it is proved by a
2 preponderance of the evidence that the appellant for whom the bond
3 has been limited pursuant to this paragraph is intentionally
4 dissipating or diverting assets outside of the ordinary course of
5 its business for the purpose of avoiding payment of the judgment,
6 the court shall enter such orders as are necessary to prevent
7 dissipation or diversion, including, but not limited to, requiring
8 that a bond be posted equal to the full amount of security required
9 pursuant to this section. For purposes of this paragraph, "Master
10 Settlement Agreement" shall have the same meaning as that term is
11 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma
12 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
13 the settlement agreement and related documents entered into on
14 November 23, 1998, by this state and leading United States smokeless
15 tobacco product manufacturers.

16 C. Subsections A and B of this section shall not apply in
17 actions involving temporary or permanent injunctions, actions for
18 divorce, separate maintenance, annulment, paternity, custody,
19 adoption, or termination of parental rights, or in juvenile matters,
20 post-decree matrimonial proceedings or habeas corpus proceedings.
21 The trial or appellate court, in its discretion, may stay the
22 enforcement of any provision in a judgment, decree or final order in
23 any of the types of actions or proceedings listed in this subsection
24 during the pendency of the appeal or while any post-trial motion is

1 pending upon such terms as to bond or otherwise as it considers
2 proper for the security of the rights of the parties. If a
3 temporary or permanent injunction is denied or dissolved, the trial
4 or appellate court, in its discretion, may restore or grant an
5 injunction during the pendency of the appeal and while any post-
6 trial motions are pending upon such terms as to bond or otherwise as
7 it considers proper for the security of the rights of the parties.

8 D. In any action not provided for in ~~subsections~~ subsection A,
9 B or C of this section, the court may stay the enforcement of any
10 judgment, decree or final order during the pendency of the appeal or
11 while any post-trial motion is pending upon such terms as to bond or
12 otherwise as it considers proper for the security of the rights of
13 the parties.

14 E. The trial court shall have continuing jurisdiction during
15 the pendency of any post-trial motion and appeal to modify any order
16 it has entered regarding security or other conditions in connection
17 with a stay.

18 F. The execution of a supersedeas bond shall not be a condition
19 for the granting of a stay of judgment, decree or final order of any
20 judicial tribunal against any county, municipality, or other
21 political subdivision of the State of Oklahoma.

22 G. Executors, administrators and guardians who have given bond
23 in this state, with sureties, according to law, are not required to
24

1 provide a supersedeas bond if they are granted a stay of enforcement
2 of a judgment, decree or final order.

3 H. After an appeal has been decided, but before the mandate has
4 issued, a party whose trial court judgment has been affirmed, may
5 move the appellate court to order judgment on the bond or other
6 security in the amount of the judgment plus interest, appeals costs
7 and allowable appeal-related attorney fees. After mandate has
8 issued, a party who has posted a bond or other security may move for
9 exoneration of the bond or other security only in the trial court;
10 and all motions concerning the bond or other security must be
11 addressed to the trial court.

12 I. Appeal bonds shall not be required for appeals of punitive
13 damages.

14 SECTION 8. AMENDATORY 12 O.S. 2001, Section 2004, as
15 amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2008,
16 Section 2004), is amended to read as follows:

17 Section 2004.

18 PROCESS

19 A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk
20 shall forthwith issue a summons. Upon request of the plaintiff
21 separate or additional summons shall issue against any defendants.

22 B. SUMMONS: FORM.

23 1. The summons shall be signed by the clerk, be under the seal
24 of the court, contain the name of the court and the names of the

1 parties, be directed to the defendant, state the name and address of
2 the plaintiff's attorney, if any, otherwise, the plaintiff's
3 address, and the time within which these rules require the defendant
4 to appear and defend, and shall notify the defendant that in case of
5 failure to appear, judgment by default will be rendered against the
6 defendant for the relief demanded in the petition.

7 2. A judgment by default shall not be different in kind from or
8 exceed in amount that prayed for in either the demand for judgment
9 or in cases not sounding in contract in a notice which has been
10 given the party against whom default judgment is sought. Except as
11 to a party against whom a judgment is entered by default, every
12 final judgment shall grant the relief to which the party in whose
13 favor it is rendered is entitled, even if the party has not demanded
14 such relief in his or her pleadings.

15 C. BY WHOM SERVED: PERSON TO BE SERVED.

16 1. SERVICE BY PERSONAL DELIVERY.

17 a. At the election of the plaintiff, process, other than
18 a subpoena, shall be served by a sheriff or deputy
19 sheriff, a person licensed to make service of process
20 in civil cases, or a person specially appointed for
21 that purpose. The court shall freely make special
22 appointments to serve all process, other than a
23 subpoena, under this paragraph.

24

1 b. A summons to be served by the sheriff or deputy
2 sheriff shall be delivered to the sheriff by the court
3 clerk or an attorney of record for the plaintiff.
4 When a summons, subpoena, or other process is to be
5 served by the sheriff or deputy sheriff of another
6 county, the court clerk shall mail it, together with
7 his voucher for the fees collected for the service, to
8 the sheriff of that county. The sheriff shall deposit
9 the voucher in the Sheriff's Service Fee Account
10 created pursuant to Section 514.1 of Title 19 of the
11 Oklahoma Statutes. The sheriff or deputy sheriff
12 shall serve the process in the manner that other
13 process issued out of the court of the sheriff's own
14 county is served. A summons to be served by a person
15 licensed to make service of process in civil cases or
16 by a person specially appointed for that purpose shall
17 be delivered by an attorney of record for the
18 plaintiff to such person.

19 c. Service shall be made as follows:

20 (1) Upon an individual other than an infant who is
21 less than fifteen (15) years of age or an
22 incompetent person, by delivering a copy of the
23 summons and of the petition personally or by
24 leaving copies thereof at the person's dwelling

1 house or usual place of abode with some person
2 then residing therein who is fifteen (15) years
3 of age or older or by delivering a copy of the
4 summons and of the petition to an agent
5 authorized by appointment or by law to receive
6 service of process;

7 (2) Upon an infant who is less than fifteen (15)
8 years of age, by serving the summons and petition
9 personally and upon either of the infant's
10 parents or guardian, or if they cannot be found,
11 then upon the person having the care or control
12 of the infant or with whom the infant lives; and
13 upon an incompetent person by serving the summons
14 and petition personally and upon the incompetent
15 person's guardian;

16 (3) Upon a domestic or foreign corporation or upon a
17 partnership or other unincorporated association
18 which is subject to suit under a common name, by
19 delivering a copy of the summons and of the
20 petition to an officer, a managing or general
21 agent, or to any other agent authorized by
22 appointment or by law to receive service of
23 process and, if the agent is one authorized by
24 statute to receive service and the statute so

1 requires, by also mailing a copy to the
2 defendant;

3 (4) Upon the United States or an officer or agency
4 thereof in the manner specified by Federal Rule
5 of Civil Procedure 4;

6 (5) Upon a state, county, school district, public
7 trust or municipal corporation or other
8 governmental organization thereof subject to
9 suit, by delivering a copy of the summons and of
10 the petition to the officer or individual
11 designated by specific statute; however, if there
12 is no statute, then upon the chief executive
13 officer or a clerk, secretary, or other official
14 whose duty it is to maintain the official records
15 of the organization; and

16 (6) Upon an inmate incarcerated in an institution
17 under the jurisdiction and control of the
18 Department of Corrections, by delivering a copy
19 of the summons and of the petition to the warden
20 or superintendent or the designee of the warden
21 or superintendent of the institution where the
22 inmate is housed. It shall be the duty of the
23 receiving warden or superintendent or a designee
24 to promptly deliver the summons and petition to

1 the inmate named therein. The warden or
2 superintendent or his or her designee shall
3 reject service of process for any inmate who is
4 not actually present in said institution.

5 2. SERVICE BY MAIL.

6 a. At the election of the plaintiff, a summons and
7 petition may be served by mail by the plaintiff's
8 attorney, any person authorized to serve process
9 pursuant to subparagraph a of paragraph 1 of this
10 subsection, or by the court clerk upon a defendant of
11 any class referred to in division (1), (3), or (5) of
12 subparagraph c of paragraph 1 of this subsection.
13 Service by mail shall be effective on the date of
14 receipt or if refused, on the date of refusal of the
15 summons and petition by the defendant.

16 b. Service by mail shall be accomplished by mailing a
17 copy of the summons and petition by certified mail,
18 return receipt requested and delivery restricted to
19 the addressee. When there is more than one defendant,
20 the summons and a copy of the petition or order shall
21 be mailed in a separate envelope to each defendant.
22 If the summons is to be served by mail by the court
23 clerk, the court clerk shall enclose the summons and a
24 copy of the petition or order of the court to be

1 served in an envelope, prepared by the plaintiff,
2 addressed to the defendant, or to the resident service
3 agent if one has been appointed. The court clerk
4 shall prepay the postage and mail the envelope to the
5 defendant, or service agent, by certified mail, return
6 receipt requested and delivery restricted to the
7 addressee. The return receipt shall be prepared by
8 the plaintiff. Service by mail to a garnishee shall
9 be accomplished by mailing a copy of the summons and
10 notice by certified mail, return receipt requested,
11 and at the election of the judgment creditor by
12 restricted delivery, to the addressee.

13 c. Service by mail shall not be the basis for the entry
14 of a default or a judgment by default unless the
15 record contains a return receipt showing acceptance by
16 the defendant or a returned envelope showing refusal
17 of the process by the defendant. Acceptance or
18 refusal of service by mail by a person who is fifteen
19 (15) years of age or older who resides at the
20 defendant's dwelling house or usual place of abode
21 shall constitute acceptance or refusal by the party
22 addressed. In the case of an entity described in
23 division (3) of subparagraph c of paragraph 1 of this
24 subsection, acceptance or refusal by any officer or by

1 any employee of the registered office or principal
2 place of business who is authorized to or who
3 regularly receives certified mail shall constitute
4 acceptance or refusal by the party addressed. A
5 return receipt signed at such registered office or
6 principal place of business shall be presumed to have
7 been signed by an employee authorized to receive
8 certified mail. In the case of a state municipal
9 corporation, or other governmental organization
10 thereof subject to suit, acceptance or refusal by an
11 employee of the office of the officials specified in
12 division (5) of subparagraph c of paragraph 1 of this
13 subsection who is authorized to or who regularly
14 receives certified mail shall constitute acceptance or
15 refusal by the party addressed. If delivery of the
16 process is refused, upon the receipt of notice of such
17 refusal and at least ten (10) days before applying for
18 entry of default, the person elected by plaintiff
19 pursuant to subparagraph a of this paragraph to serve
20 the process shall mail to the defendant by first-class
21 mail a copy of the summons and petition and a notice
22 prepared by the plaintiff that despite such refusal
23 the case will proceed and that judgment by default
24 will be rendered against him unless he appears to

1 defend the suit. Any default or judgment by default
2 shall be set aside upon motion of the defendant in the
3 manner prescribed in Section 1031.1 of this title, or
4 upon petition of the defendant in the manner
5 prescribed in Section 1033 of this title if the
6 defendant demonstrates to the court that the return
7 receipt was signed or delivery was refused by an
8 unauthorized person. A petition shall be filed within
9 one (1) year after the defendant has notice of the
10 default or judgment by default but in no event more
11 than two (2) years after the filing of the judgment.

12 3. SERVICE BY PUBLICATION.

13 a. Service of summons upon a named defendant may be made
14 by publication when it is stated in the petition,
15 verified by the plaintiff or the plaintiff's attorney,
16 or in a separate affidavit by the plaintiff or the
17 plaintiff's attorney filed with the court, that with
18 due diligence service cannot be made upon the
19 defendant by any other method.

20 b. Service of summons upon the unknown successors of a
21 named defendant, a named decedent, or a dissolved
22 partnership, corporation, or other association may be
23 made by publication when it is stated in a petition,
24 verified by the plaintiff or the plaintiff's attorney,

1 or in a separate affidavit by the plaintiff or the
2 plaintiff's attorney filed with the court, that the
3 person who verified the petition or the affidavit does
4 not know and with due diligence cannot ascertain the
5 following:

- 6 (1) whether a person named as defendant is living or
7 dead, and, if dead, the names or whereabouts of
8 the person's successors, if any,
- 9 (2) the names or whereabouts of the unknown
10 successors, if any, of a named decedent,
- 11 (3) whether a partnership, corporation, or other
12 association named as a defendant continues to
13 have legal existence or not; or the names or
14 whereabouts of its officers or successors,
- 15 (4) whether any person designated in a record as a
16 trustee continues to be the trustee; or the names
17 or whereabouts of the successors of the trustee,
18 or
- 19 (5) the names or whereabouts of the owners or holders
20 of special assessment or improvement bonds, or
21 any other bonds, sewer warrants or tax bills.

22 c. Service pursuant to this paragraph shall be made by
23 publication of a notice, signed by the court clerk,
24 one (1) day a week for three (3) consecutive weeks in

1 a newspaper authorized by law to publish legal notices
2 which is published in the county where the petition is
3 filed. If no newspaper authorized by law to publish
4 legal notices is published in such county, the notice
5 shall be published in some such newspaper of general
6 circulation which is published in an adjoining county.
7 All named parties and their unknown successors who may
8 be served by publication may be included in one
9 notice. The notice shall state the court in which the
10 petition is filed and the names of the plaintiff and
11 the parties served by publication, and shall designate
12 the parties whose unknown successors are being served.
13 The notice shall also state that the named defendants
14 and their unknown successors have been sued and must
15 answer the petition on or before a time to be stated
16 (which shall not be less than forty-one (41) days from
17 the date of the first publication), or judgment, the
18 nature of which shall be stated, will be rendered
19 accordingly. If jurisdiction of the court is based on
20 property, any real property subject to the
21 jurisdiction of the court and any property or debts to
22 be attached or garnished must be described in the
23 notice.
24

1 (1) When the recovery of money is sought, it is not
2 necessary for the publication notice to state the
3 separate items involved, but the total amount
4 that is claimed must be stated. When interest is
5 claimed, it is not necessary to state the rate of
6 interest, the date from which interest is
7 claimed, or that interest is claimed until the
8 obligation is paid.

9 (2) It is not necessary for the publication notice to
10 state that the judgment will include recovery of
11 costs in order for a judgment following the
12 publication notice to include costs of suit.

13 (3) In an action to quiet title to real property, it
14 is not necessary for the publication notice to
15 state the nature of the claim or interest of
16 either party, and in describing the nature of the
17 judgment that will be rendered should the
18 defendant fail to answer, it is sufficient to
19 state that a decree quieting plaintiff's title to
20 the described property will be entered. It is
21 not necessary to state that a decree forever
22 barring the defendant from asserting any interest
23 in or to the property is sought or will be
24 entered if the defendant does not answer.

1 (4) In an action to foreclose a mortgage, it is
2 sufficient that the publication notice state that
3 if the defendant does not answer, the defendant's
4 interest in the property will be foreclosed. It
5 is not necessary to state that a judgment forever
6 barring the defendant from all right, title,
7 interest, estate, property and equity of
8 redemption in or to said property or any part
9 thereof is requested or will be entered if the
10 defendant does not answer.

11 d. Service by publication is complete when made in the
12 manner and for the time prescribed in subparagraph c
13 of this paragraph. Service by publication shall be
14 proved by the affidavit of any person having knowledge
15 of the publication. No default judgment may be
16 entered on such service until proof of service by
17 publication is filed with and approved by the court.

18 e. Before entry of a default judgment or order against a
19 party who has been served solely by publication under
20 this paragraph, the court shall conduct an inquiry to
21 determine whether the plaintiff, or someone acting in
22 his behalf, made a distinct and meaningful search of
23 all reasonably available sources to ascertain the
24 whereabouts of any named parties who have been served

1 solely by publication under this paragraph. Before
2 entry of a default judgment or order against the
3 unknown successors of a named defendant, a named
4 decedent, or a dissolved partnership, corporation or
5 association, the court shall conduct an inquiry to
6 ascertain whether the requirements described in
7 subparagraph b of this paragraph have been satisfied.

8 f. A party against whom a default judgment or order has
9 been rendered, without other service than by
10 publication in a newspaper, may, at any time within
11 three (3) years after the filing of the judgment or
12 order, have the judgment or order set aside in the
13 manner prescribed in Sections 1031.1 and 1033 of this
14 title. Before the judgment or order is set aside, the
15 applicant shall notify the adverse party of the
16 intention to make an application and shall file a full
17 answer to the petition, pay all costs if the court
18 requires them to be paid, and satisfy the court by
19 affidavit or other evidence that during the pendency
20 of the action the applicant had no actual notice
21 thereof in time to appear in court and make a defense.
22 The title to any property which is the subject of and
23 which passes to a purchaser in good faith by or in
24 consequence of the judgment or order to be opened

1 shall not be affected by any proceedings under this
2 subparagraph. Nor shall proceedings under this
3 subparagraph affect the title of any property sold
4 before judgment under an attachment. The adverse
5 party, on the hearing of an application to open a
6 judgment or order as provided by this subparagraph,
7 shall be allowed to present evidence to show that
8 during the pendency of the action the applicant had
9 notice thereof in time to appear in court and make a
10 defense.

11 g. The term "successors" includes all heirs, executors,
12 administrators, devisees, trustees, and assigns,
13 immediate and remote, of a named individual,
14 partnership, corporation, or association.

15 h. Service outside of the state does not give the court
16 in personal jurisdiction over a defendant who is not
17 subject to the jurisdiction of the courts of this
18 state or who has not, either in person or through an
19 agent, submitted to the jurisdiction of the courts of
20 this state.

21 4. SERVICE ON THE SECRETARY OF STATE.

22 a. Service of process on a domestic or foreign
23 corporation may be made by serving the Secretary of
24 State as the corporation's agent, if:

1 (1) there is no registered agent for the corporation
2 listed in the records of the Secretary of State;
3 or

4 (2) neither the registered agent nor an officer of
5 the corporation could be found at the registered
6 office of the corporation, when service of
7 process was attempted.

8 b. Before resorting to service on the Secretary of State
9 the plaintiff must have attempted service either in
10 person or by mail on the corporation at:

11 (1) the corporation's last-known address shown on the
12 records of the Franchise Tax Division of the
13 Oklahoma Tax Commission, if any is listed there;
14 and

15 (2) the corporation's last-known address shown on the
16 records of the Secretary of State, if any is
17 listed there; and

18 (3) the corporation's last address known to the
19 plaintiff.

20 If any of these addresses are the same, the plaintiff is
21 not required to attempt service more than once at any
22 address. The plaintiff shall furnish the Secretary of
23 State with a certified copy of the return or returns
24 showing the attempted service.

1 c. Service on the Secretary of State shall be made by
2 filing two (2) copies of the summons and petition with
3 the Secretary of State, notifying the Secretary of
4 State that service is being made pursuant to the
5 provisions of this paragraph, and paying the Secretary
6 of State the fee prescribed in paragraph 7 of Section
7 1142 of Title 18 of the Oklahoma Statutes, which fee
8 shall be taxed as part of the costs of the action,
9 suit or proceeding if the plaintiff shall prevail
10 therein. If a registered agent for the corporation is
11 listed in the records of the Secretary of State, the
12 plaintiff must also furnish a certified copy of the
13 return showing that service on the registered agent
14 has been attempted either in person or by mail, and
15 that neither the registered agent nor an officer of
16 the corporation could be found at the registered
17 office of the corporation.

18 d. Within three (3) working days after receiving the
19 summons and petition, the Secretary of State shall
20 send notice by letter, certified mail, return receipt
21 requested, directed to the corporation at its
22 registered office or the last-known address found in
23 the office of the Secretary of State, or if no address
24 is found there, to the corporation's last-known

1 address provided by the plaintiff. The notice shall
2 enclose a copy of the summons and petition and any
3 other papers served upon the Secretary of State. The
4 corporation shall not be required to serve its answer
5 until forty (40) days after service of the summons and
6 petition on the Secretary of State.

7 e. Before entry of a default judgment or order against a
8 corporation that has been served by serving the
9 Secretary of State as its agent under this paragraph,
10 the court shall determine whether the requirements of
11 this paragraph have been satisfied. A default
12 judgment or order against a corporation that has been
13 served only by service on the Secretary of State may
14 be set aside upon motion of the corporation in the
15 manner prescribed in Section 1031.1 of this title, or
16 upon petition of the corporation in the manner
17 prescribed in Section 1033 of this title, if the
18 corporation demonstrates to the court that it had no
19 actual notice of the action in time to appear and make
20 its defense. A petition shall be filed within one (1)
21 year after the corporation has notice of the default
22 judgment or order but in no event more than two (2)
23 years after the filing of the default judgment or
24 order.

1 f. The Secretary of State shall maintain an alphabetical
2 record of service setting forth the name of the
3 plaintiff and defendant, the title, docket number, and
4 nature of the proceeding in which the process has been
5 served upon the defendant, the fact that service has
6 been effected pursuant to the provisions of this
7 paragraph, the return date thereof, and the date when
8 the service was made. The Secretary of State shall
9 not be required to retain this information for a
10 period longer than five (5) years from receipt of the
11 service of process.

12 g. The provisions of this paragraph shall not apply to a
13 foreign insurance company doing business in this
14 state.

15 5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of
16 the summons or the voluntary appearance of a defendant is equivalent
17 to service.

18 6. SERVICE BY OTHER METHODS. If service cannot be made by
19 personal delivery or by mail, a defendant of any class referred to
20 in division (1) or (3) of subparagraph c of paragraph 1 of this
21 subsection may be served as provided by court order in any manner
22 which is reasonably calculated to give the defendant actual notice
23 of the proceedings and an opportunity to be heard.

1 7. NO SERVICE BY PRISONER. No prisoner in any jail, Department
2 of Corrections facility, private prison, or parolee or probationer
3 under supervision of the Department of Corrections shall be
4 appointed by any court to serve process on any defendant, party or
5 witness.

6 D. SUMMONS AND PETITION. The summons and petition shall be
7 served together. The plaintiff shall furnish the person making
8 service with such copies as are necessary. The failure to serve a
9 copy of the petition with the summons is not a ground for dismissal
10 for insufficiency of service of process, but on motion of the party
11 served, the court may extend the time to answer or otherwise plead.
12 If a summons and petition are served by personal delivery, the
13 person serving the summons shall state on the copy that is left with
14 the person served the date that service is made. This provision is
15 not jurisdictional, but if the failure to comply with it prejudices
16 the party served, the court, on motion of the party served, may
17 extend the time to answer or otherwise plead.

18 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

19 1. Service of the summons and petition may be made anywhere
20 within this state in the manner provided by subsection C of this
21 section.

22 2. When the exercise of jurisdiction is authorized by
23 subsection F of this section, service of the summons and petition
24 may be made outside this state:

- a. by personal delivery in the manner prescribed for service within this state,
- b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,
- c. in the manner prescribed by paragraph 2 of subsection C of this section,
- d. as directed by the foreign authority in response to a letter rogatory,
- e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or
- f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

1 5. When subsection C of this section requires that in order to
2 effect service one or more designated individuals be served, service
3 outside this state under this section must be made upon the
4 designated individual or individuals.

5 6. a. A court of this state may order service upon any
6 person who is domiciled or can be found within this
7 state of any document issued in connection with a
8 proceeding in a tribunal outside this state. The
9 order may be made upon application of any interested
10 person or in response to a letter rogatory issued by a
11 tribunal outside this state and shall direct the
12 manner of service.

13 b. Service in connection with a proceeding in a tribunal
14 outside this state may be made within this state
15 without an order of court.

16 c. Service under this paragraph does not, of itself,
17 require the recognition or enforcement of an order,
18 judgment, or decree rendered outside this state.

19 F. ASSERTION OF JURISDICTION. A court of this state may
20 exercise jurisdiction on any basis consistent with the Constitution
21 of this state and the Constitution of the United States.

22 G. RETURN.

23 1. The person serving the process shall make proof of service
24 thereof to the court promptly and in any event within the time

1 during which the person served must respond to the process, but the
2 failure to make proof of service does not affect the validity of the
3 service.

4 2. When process has been served by a sheriff or deputy sheriff
5 and return thereof is filed in the office of the court clerk, a copy
6 of the return shall be sent by the court clerk to the plaintiff's
7 attorney within three (3) days after the return is filed. If
8 service is made by a person other than a sheriff, deputy sheriff, or
9 licensed process server, that person shall make affidavit thereof.
10 The return shall set forth the name of the person served and the
11 date, place, and method of service.

12 3. If service was by mail, the person mailing the summons and
13 petition shall endorse on the copy of the summons or order of the
14 court that is filed in the action the date and place of mailing and
15 the date when service was receipted or service was rejected, and
16 shall attach to the copy of the summons or order a copy of the
17 return receipt or returned envelope, if and when received, showing
18 whether the mailing was accepted, refused, or otherwise returned.
19 If the mailing was refused, the return shall also show the date and
20 place of any subsequent mailing pursuant to paragraph 2 of
21 subsection C of this section. When the summons and petition are
22 mailed by the court clerk, the court clerk shall notify the
23 plaintiff's attorney within three (3) days after receipt of the

24

1 returned card or envelope showing that the card or envelope has been
2 received.

3 H. AMENDMENT. At any time in its discretion and upon such
4 terms as it deems just, the court may allow any process or proof of
5 service thereof to be amended, unless it clearly appears that
6 material prejudice would result to the substantial rights of the
7 party against whom the process issued.

8 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
9 not made upon a defendant within ~~one hundred eighty (180)~~ one
10 hundred twenty (120) days after the filing of the petition and the
11 plaintiff cannot show good cause why such service was not made
12 within that period, the action ~~may~~ shall be deemed dismissed as to
13 that defendant without prejudice ~~upon the court's own initiative~~
14 ~~with notice to the plaintiff or upon motion~~. The action shall not
15 be dismissed ~~where~~ if a summons was served on the defendant within
16 ~~one hundred eighty (180)~~ one hundred twenty (120) days after the
17 filing of the petition and a court later holds that the summons or
18 its service was invalid. After a court quashes a summons or its
19 service, a new summons may be served on the defendant within a time
20 specified by the judge. If the new summons is not served within the
21 specified time, the action shall be deemed to have been dismissed
22 without prejudice as to that defendant. This subsection shall not
23 apply with respect to a defendant who has been outside of this state

24

1 for ~~one hundred eighty (180)~~ one hundred twenty (120) days following
2 the filing of the petition.

3 SECTION 9. AMENDATORY 12 O.S. 2001, Section 2011, as
4 amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
5 Section 2011), is amended to read as follows:

6 Section 2011.

7 SIGNING OF PLEADINGS

8 A. SIGNATURE. Every pleading, written motion, and other paper
9 shall be signed by at least one attorney of record in ~~his~~ the
10 attorney's individual name, whose Oklahoma Bar Association
11 identification number shall be stated, or, if the party is not
12 represented by an attorney, shall be signed by the party. Each
13 paper shall state the address of the signer and telephone number, if
14 any. Except when otherwise specifically provided by rule or
15 statute, pleadings need not be verified or accompanied by affidavit.
16 An unsigned paper shall be stricken unless the omission of the
17 signature is corrected promptly after being called to the attention
18 of the attorney or party.

19 B. REPRESENTATIONS TO COURT. By presenting to the court,
20 whether by signing, filing, submitting, or later advocating, a
21 pleading, written motion, or other paper, an attorney or
22 unrepresented party is certifying that to the best of the person's
23 knowledge, information, and belief, formed after an inquiry
24 reasonable under the circumstances:

1 1. It is not being presented for any improper or frivolous
2 purpose, such as to harass or to cause unnecessary delay or needless
3 increase in the cost of litigation;

4 2. The claims, defenses and other legal contentions therein are
5 warranted by existing law or by a nonfrivolous argument for the
6 extension, modification, or reversal of existing law or the
7 establishment of new law;

8 3. The allegations and other factual contentions have
9 evidentiary support or, if specifically so identified, are likely to
10 have evidentiary support after a reasonable opportunity for further
11 investigation or discovery; and

12 4. The denials of factual contentions are warranted on the
13 evidence or, if specifically so identified, are reasonably based on
14 a lack of information or belief.

15 C. SANCTIONS. If, after notice and a reasonable opportunity to
16 respond, the court determines that subsection B of this section has
17 been violated, the court shall, subject to the conditions stated
18 below, impose an appropriate sanction upon the attorneys, law firms,
19 or parties that have violated subsection B of this section or are
20 responsible for the violation.

21 1. HOW INITIATED.

22 a. By Motion. A motion for sanctions under this rule
23 shall be made separately from other motions or
24 requests and shall describe the specific conduct

1 alleged to violate subsection B of this section. It
2 shall be served as provided in Section 2005 of this
3 title, but shall not be filed with or presented to the
4 court unless, within twenty-one (21) days after
5 service of the motion or such other period as the
6 court may prescribe, the challenged paper, claim,
7 defense, contention, allegation, or denial is not
8 withdrawn or appropriately corrected. If warranted,
9 the court may award to the party prevailing on the
10 motion the reasonable expenses and attorneys fees
11 incurred in presenting or opposing the motion. Absent
12 exceptional circumstances, a law firm shall be held
13 jointly responsible for violations committed by its
14 partners, associates, and employees.

15 b. On Court's Initiative. On its own initiative, the
16 court may enter an order describing the specific
17 conduct that appears to violate subsection B of this
18 section and directing an attorney, law firm, or party
19 to show cause why it has not violated subsection B of
20 this section with respect thereto.

21 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
22 violation of this section shall be limited to what is sufficient to
23 deter repetition of such conduct or comparable conduct by others
24 similarly situated. Subject to the limitations in subparagraphs a,

1 b and c of this paragraph, the sanction may consist of, or include,
2 directives of a nonmonetary nature, an order to pay a penalty into
3 court, or, if imposed on motion and warranted for effective
4 deterrence, an order directing payment to the movant of some or all
5 of the reasonable attorneys fees and other expenses incurred as a
6 direct result of the violation.

7 a. Monetary sanctions shall not be awarded against a
8 represented party for a violation of paragraph 2 of
9 subsection B of this section.

10 b. Monetary sanctions shall not be awarded on the court's
11 initiative unless the court issues its order to show
12 cause before a voluntary dismissal or settlement of
13 the claims made by or against the party which is, or
14 whose attorneys are, to be sanctioned.

15 c. Monetary sanctions shall be awarded for any violations
16 of paragraph 1 of subsection B of this section. The
17 sanctions shall consist of an order directing payment
18 of reasonable costs, including attorney fees, incurred
19 by the movant with respect to the conduct for which
20 the sanctions are imposed. In addition, the court may
21 impose any other sanctions authorized by this
22 paragraph.

23

24

1 3. ORDER. When imposing sanctions, the court shall describe
2 the conduct determined to constitute a violation of this section and
3 explain the basis for the sanction imposed.

4 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
5 to disclosures and discovery requests, responses, objections, and
6 motions that are subject to the provisions of Sections 3226 through
7 3237 of this title.

8 E. DEFINITION. As used in this section, "frivolous" means the
9 action or pleading was knowingly asserted in bad faith, ~~was~~
10 ~~unsupported by any credible evidence, was not grounded in fact, or~~
11 ~~was unwarranted by existing law or a good faith argument for the~~
12 ~~extension, modification, or reversal of existing law or the~~
13 ~~establishment of new law~~ or without any rational argument based in
14 law or facts to support the position of the litigant.

15 SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L.
16 2004, as amended by Section 10, Chapter 12, O.S.L. 2007 (12 O.S.
17 Supp. 2008, Section 2011.1), is amended to read as follows:

18 Section 2011.1 In any action not arising out of contract, if
19 requested the court shall, upon ruling on a motion to dismiss an
20 action or a motion for summary judgment or subsequent to
21 adjudication on the merits, determine whether a claim or defense
22 asserted in the action by a nonprevailing party was frivolous. As
23 used in this section, "frivolous" means the claim or defense was
24 knowingly asserted in bad faith, ~~was unsupported by any credible~~

1 ~~evidence, was not grounded in fact, or was unwarranted by existing~~
2 ~~law or a good faith argument for the extension, modification, or~~
3 ~~reversal of existing law or the establishment of new law~~ or without
4 any rational argument based in law or facts to support the position
5 of the litigant. Upon so finding, the court shall enter an order
6 requiring such nonprevailing party to reimburse the prevailing party
7 for reasonable costs, including attorney fees, incurred with respect
8 to such claim or defense. In addition, the court may impose any
9 sanction authorized by Section 2011 of ~~Title 12 of the Oklahoma~~
10 ~~Statutes~~ this title.

11 SECTION 11. AMENDATORY 12 O.S. 2001, Section 2023, is
12 amended to read as follows:

13 Section 2023.

14 CLASS ACTIONS

15 A. PREREQUISITES TO A CLASS ACTION. One or more members of a
16 class may sue or be sued as representative parties on behalf of all
17 only if:

18 1. The class is so numerous that joinder of all members is
19 impracticable;

20 2. There are questions of law or fact common to the class;

21 3. The claims or defenses of the representative parties are
22 typical of the claims or defenses of the class; and

23 4. The representative parties will fairly and adequately
24 protect the interests of the class.

1 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as
2 a class action if the prerequisites of subsection A of this section
3 are satisfied and in addition:

4 1. The prosecution of separate actions by or against individual
5 members of the class would create a risk of:

6 a. inconsistent or varying adjudications with respect to
7 individual members of the class which would establish
8 incompatible standards of conduct for the party
9 opposing the class, or

10 b. adjudications with respect to individual members of
11 the class which would as a practical matter be
12 dispositive of the interests of the other members not
13 parties to the adjudications or substantially impair
14 or impede their ability to protect their interests; or

15 2. The party opposing the class has acted or refused to act on
16 grounds generally applicable to the class, thereby making
17 appropriate final injunctive relief or corresponding declaratory
18 relief with respect to the class as a whole; or

19 3. The court finds that the questions of law or fact common to
20 the members of the class predominate over any questions affecting
21 only individual members, and that a class action is superior to
22 other available methods for the fair and efficient adjudication of
23 the controversy. The matters pertinent to the findings include:

24

- a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,
- b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,
- c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and
- d. the difficulties likely to be encountered in the management of a class action.

C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

1. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all potential members who can be

1 identified through reasonable effort. The notice shall advise each
2 potential member that:

3 a. the court will ~~exclude him from~~ include the potential
4 member in the class only if he the potential member so
5 requests by a specified date,

6 b. the judgment, whether favorable or not, will include
7 all only members who ~~do not request exclusion~~ have
8 advised the court by the specified date that they
9 desire to be included in the class, and

10 c. any member who ~~does not request exclusion~~ requests
11 inclusion may, ~~if he desires,~~ enter an appearance
12 through ~~his~~ counsel.

13 ~~Where~~ If the class contains more than five hundred (500)
14 potential members who can be identified through reasonable effort,
15 it shall not be necessary to direct individual notice to more than
16 five hundred (500) potential members, but the potential members to
17 whom individual notice is not directed shall be given notice in such
18 manner as the court shall direct, which may include publishing
19 notice in newspapers, magazines, trade journals or other
20 publications, posting it in appropriate places, and taking other
21 steps that are reasonably calculated to bring the notice to the
22 attention of such members; provided, that the cost of giving such
23 notice shall be reasonable in view of the amounts that may be
24 recovered by the class ~~members who are being notified.~~ ~~Members~~

1 Potential members to whom individual notice was not directed may
2 request ~~exclusion from~~ inclusion in the class at any time before the
3 issue of liability is determined, ~~and;~~ provided, commencing an
4 individual action before the issue of liability is determined in the
5 class action shall ~~be the equivalent of requesting~~ result in
6 exclusion from the class.

7 3. The judgment in an action maintained as a class action under
8 ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section, whether
9 or not favorable to the class, shall include and describe those whom
10 the court finds to be members of the class. The judgment in an
11 action maintained as a class action under paragraph 3 of subsection
12 B of this section, whether or not favorable to the class, shall
13 include and specify or describe those to whom the notice provided in
14 paragraph 2 of this subsection ~~C of this section~~ was directed, and
15 who have ~~not~~ requested ~~exclusion~~ inclusion, and whom the court finds
16 to be members of the class.

17 4. When appropriate:

- 18 a. an action may be brought or maintained as a class
19 action with respect to particular issues, or
20 b. a class may be divided into subclasses and each
21 subclass treated as a class.

22 The provisions of this section shall then be construed and applied
23 accordingly.

24

1 D. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to
2 which this section applies, the court may make appropriate orders:

3 1. Determining the course of proceedings or prescribing
4 measures to prevent undue repetition or complication in the
5 presentation of evidence or argument;

6 2. Requiring, for the protection of the members of the class or
7 otherwise for the fair conduct of the action, that notice be given
8 in such manner as the court may direct to some or all of the members
9 of any step in the action, or of the proposed extent of the
10 judgment, or of the opportunity of members to signify whether they
11 consider the representation fair and adequate, to intervene and
12 present claims or defenses, or otherwise to come into the action;

13 3. Upon certification of a class, requiring for the sole
14 purpose of class notice, parties to the action provide such names
15 and addresses of potential members of the class as they possess;

16 4. Imposing conditions on the representative parties or on
17 intervenors;

18 ~~4.~~ 5. Requiring that the pleadings be amended to eliminate
19 therefrom allegations as to representation of absent persons, and
20 that the action proceed accordingly; and

21 ~~5.~~ 6. Dealing with similar procedural matters.

22 The orders may be combined with an order under Section ~~16~~ 2016 of
23 this ~~act~~ title and may be altered or amended as may be desirable
24 from time to time.

1 E. DISMISSAL OR COMPROMISE. A class action shall not be
2 dismissed or compromised without the approval of the court, and
3 notice of the proposed dismissal or compromise shall be given to all
4 members of the class in such manner as the court directs.

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2056 of Title 12, unless there
7 is created a duplication in numbering, reads as follows:

8 A. FOR CLAIMANT. A party seeking to recover upon a claim,
9 counterclaim, or cross-claim or to obtain a declaratory judgment may
10 move, at any time after the expiration of twenty (20) days from the
11 commencement of the action or after service of a motion for summary
12 judgment by the adverse party, with or without supporting affidavits
13 for a summary judgment in the party's favor upon all or any part
14 thereof.

15 B. FOR DEFENDING PARTY. A party against whom a claim,
16 counterclaim, or cross-claim is asserted or a declaratory judgment
17 is sought may move, at any time, with or without supporting
18 affidavits for a summary judgment in the party's favor as to all or
19 any part thereof.

20 C. MOTIONS AND PROCEEDINGS THEREON. The motion shall be served
21 at least ten (10) days before the time fixed for the hearing. The
22 adverse party prior to the day of hearing may serve opposing
23 affidavits. The judgment sought shall be rendered forthwith if the
24 pleadings, depositions, answers to interrogatories, and admissions

1 on file, together with the affidavits, if any, show that there is no
2 genuine issue as to any material fact and that the moving party is
3 entitled to a judgment as a matter of law. A summary judgment,
4 interlocutory in character, may be rendered on the issue of
5 liability alone although there is a genuine issue as to the amount
6 of damages.

7 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this
8 section, judgment is not rendered upon the whole case or for all the
9 relief asked and a trial is necessary, the court at the hearing of
10 the motion, by examining the pleadings and the evidence before it
11 and by interrogating counsel, shall ascertain, if practicable, what
12 material facts exist without substantial controversy and what
13 material facts are actually and in good faith controverted. It
14 shall make thereupon an order specifying the facts that appear
15 without substantial controversy, including the extent to which the
16 amount of damages or other relief is not in controversy, and
17 directing such further proceedings in the action as are just. Upon
18 the trial of the action, the facts so specified shall be deemed
19 established, and the trial shall be conducted accordingly.

20 E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.
21 Supporting and opposing affidavits shall be made on personal
22 knowledge, shall set forth such facts as would be admissible in
23 evidence, and shall show affirmatively that the affiant is competent
24 to testify to the matters stated therein. Sworn or certified copies

1 of all papers or parts thereof referred to in an affidavit shall be
2 attached thereto or served therewith. The court may permit
3 affidavits to be supplemented or opposed by depositions, answers to
4 interrogatories, or further affidavits. When a motion for summary
5 judgment is made and supported as provided in this rule, a party may
6 not rest upon the mere allegations or denials of the party's
7 pleading, but the party's response, by affidavits or as otherwise
8 provided in this rule, must set forth specific facts showing that
9 there is a genuine issue for trial or no genuine issue for trial, as
10 appropriate. The adverse party has the burden of producing evidence
11 on any issue raised in the motion on which the adverse party would
12 have the burden of persuasion at trial. If the adverse party does
13 not so respond, summary judgment, if otherwise appropriate
14 hereunder, shall be entered against the adverse party.

15 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the
16 affidavits of a party opposing the motion that the party cannot for
17 reasons stated present by affidavit facts essential to justify the
18 party's opposition, the court may refuse the application for
19 judgment or may order a continuance to permit affidavits to be
20 obtained or depositions to be taken or discovery to be had or may
21 make such other order as is just. Upon request of a party opposing
22 a motion for summary judgment, the court shall allow a reasonable
23 amount of time to conclude discovery sufficient to allow the party
24 to adequately respond to the motion for summary judgment.

1 G. AFFIDAVITS MADE IN BAD FAITH. Should it appear to the
2 satisfaction of the court at any time that any of the affidavits
3 presented pursuant to this rule are presented in bad faith or solely
4 for the purpose of delay, the court shall forthwith order the party
5 employing them to pay to the other party the amount of the
6 reasonable expenses which the filing of the affidavits caused the
7 other party to incur, including reasonable attorney fees, and any
8 offending party or attorney may be adjudged guilty of contempt.

9 H. STANDARD OF PROOF. Summary judgment shall be granted in
10 favor of a party only where there is no genuine issue as to any
11 material fact and that the moving party is entitled to a judgment as
12 a matter of law. If a standard of proof beyond a preponderance of
13 the evidence applies at trial, the heightened standard shall be
14 taken into account by the court in ruling on a motion for summary
15 judgment.

16 I. APPEALS. An order denying summary judgment, summary
17 disposition of issues, or partial summary adjudication will be
18 appealable as part of any appeal from an appealable order or
19 judgment which is later rendered in the case.

20 J. SUPERSESSION. The provisions of this section supersede any
21 court rules otherwise applicable to the subject matter of this
22 section.

23 SECTION 13. AMENDATORY 12 O.S. 2001, Section 2702, is
24 amended to read as follows:

1 Section 2702. A. OPINION TESTIMONY BY LAY WITNESSES. If the
2 witness is not testifying as an expert, the witness' testimony in
3 the form of opinions or inferences is limited to those opinions or
4 inferences which are:

5 1. Rationally based on the perception of the witness;

6 2. Helpful to a clear understanding of the witness' testimony
7 or the determination of a fact in issue; and

8 3. Not based on scientific, technical, or other specialized
9 knowledge within the scope of subsection B of this section.

10 B. TESTIMONY BY EXPERTS. If scientific, technical or other
11 specialized knowledge will assist the trier of fact to understand
12 the evidence or to determine a fact in issue, a witness qualified as
13 an expert by knowledge, skill, experience, training or education may
14 testify in the form of an opinion or otherwise, if:

15 1. The testimony is based upon sufficient facts or data;

16 2. The testimony is the product of reliable principles and
17 methods; and

18 3. The witness has applied the principles and methods reliably
19 to the facts of the case.

20 C. BASES OF EXPERT OPINION TESTIMONY. The facts or data in the
21 particular case upon which an expert bases an opinion or inference
22 may be those perceived by or made known to the expert at or before
23 the hearing. If of a type reasonably relied upon by experts in the
24 particular field in forming opinions or inferences upon the subject,

1 the facts or data need not be admissible in evidence in order for
2 the opinion or inference to be admitted. Facts or data that are
3 otherwise inadmissible shall not be disclosed to the jury by the
4 proponent of the opinion or inference unless the court determines
5 that their probative value in assisting the jury to evaluate the
6 expert's opinion substantially outweighs their prejudicial effect.

7 D. BARS TO EXPERT TESTIMONY.

8 1. A witness qualified as an expert by knowledge, skill,
9 experience, training, or education may only offer expert testimony
10 with respect to a particular field in which the expert is qualified.

11 2. An expert witness may receive a reasonable and customary fee
12 for the rendering of professional services; provided, that the
13 testimony of an expert witness shall not be admitted if any such
14 compensation is contingent on the outcome of any claim or case with
15 respect to which the testimony is being offered and said contingency
16 contract shall be null and void as against public policy.

17 E. MANDATORY PRETRIAL HEARING. If the witness is testifying as
18 an expert, then upon motion of a party, the court shall hold a
19 pretrial hearing to determine whether the witness qualifies as an
20 expert and whether the expert's testimony satisfies the requirements
21 of subsections B through D of this section. The court shall allow
22 sufficient time for a hearing and shall rule on the qualifications
23 of the witness to testify as an expert and whether or not the
24 testimony satisfies the requirements of subsections B through D of

1 this section. Such hearing and ruling shall be completed no later
2 than the Final Pretrial Hearing. Upon request, the trial court's
3 ruling shall set forth the findings of fact and conclusions of law
4 upon which the order to admit or exclude expert evidence is based.

5 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

6 1. Whether or not any party elects to request a pretrial
7 hearing contemplated in subsection E of this section, all parties
8 shall disclose to other parties the identity of any person who may
9 be used at trial to present expert evidence.

10 2. Except as otherwise stipulated or directed by the court,
11 this disclosure shall, with respect to a witness who is retained or
12 specially employed to provide expert testimony in the case or whose
13 duties as an employee of the party regularly involve giving expert
14 testimony, be accompanied by a written report prepared and signed by
15 the witness. The report shall contain a complete statement of all
16 opinions to be expressed and the basis and reasons therefor; the
17 data or other information relied upon by the witness in forming the
18 opinions; any exhibits to be used as a summary of or support for the
19 opinions; the qualifications of the witness, including a list of all
20 publications authored by the witness within the preceding ten (10)
21 years; the compensation to be paid for the study and testimony; and
22 a listing of any other cases in which the witness has testified as
23 an expert at trial or by deposition within the preceding four (4)
24 years.

1 3. These disclosures shall be made at the times and in the
2 sequence directed by the court. In the absence of other directions
3 from the court or stipulation by the parties, the disclosures shall
4 be made at least ninety (90) days before the trial date or the date
5 the case is to be ready for trial or, if the evidence is intended
6 solely to contradict or rebut evidence on the same subject matter
7 identified by another party under paragraph 2 of this subsection,
8 within thirty (30) days after the disclosure made by the other
9 party.

10 4. A party may depose any person who has been identified as an
11 expert whose opinions may be presented at trial. If a report from
12 the expert is required under paragraph 2 of this subsection, the
13 deposition shall not be conducted until after the report is
14 provided.

15 G. INTERPRETATION. In interpreting and applying this section,
16 the courts of this state shall follow the opinions of the Supreme
17 Court of the United States in Daubert v. Merrell Dow
18 Pharmaceuticals, Inc., 509 U.S. 579 (1993), General Electric Co. v.
19 Joiner, 522 U.S. 136 (1997), Kuhmo Tire Co. Ltd. v. Carmichael, 526
20 U.S. 137 (1999), Weisgram v. Marley, 528 U.S. 440 (2000); moreover,
21 the courts of this state may draw from other precedents binding in
22 the federal courts of this state applying the standards announced by
23 the Supreme Court of the United States in the foregoing cases.

1 H. INTERLOCUTORY APPEAL. Interlocutory appeal of a ruling on
2 the admissibility of expert evidence shall be available at the
3 discretion of the appellate court. In deciding whether to grant the
4 interlocutory appeal, the court shall consider whether:

5 1. The ruling involved any challenge to the constitutionality
6 of this section;

7 2. The ruling will help prove or disprove criminal liability;
8 or

9 3. The ruling will help establish civil liability at or above
10 Seventy-five Thousand Dollars (\$75,000.00), where the testimony
11 could be outcome-determinative for establishing liability or
12 determining damages. Neither a party's failure to seek
13 interlocutory appeal or an appellate court's decision to deny a
14 motion for interlocutory appeal shall waive a party's right to
15 appeal a ruling on the admissibility of expert evidence after an
16 entry of judgment in the case.

17 I. STANDARD OF REVIEW.

18 1. As the proper construction of the expert evidence
19 admissibility framework prescribed by this section is a question of
20 law, the courts of appeals shall apply a de novo standard of review
21 in determining whether the trial court fully applied the proper
22 legal standard in considering the admissibility of expert evidence.

23 2. As the application of this section to determine the
24 admissibility of expert testimony is a question of fact, the courts

1 of appeals shall apply an abuse of discretion standard in
2 determining whether the trial court properly admitted or excluded
3 particular expert evidence.

4 J. SEVERABILITY CLAUSE. The provisions of this section are
5 severable. If any portion of this section is declared
6 unconstitutional or the application of any part of this section to
7 any person or circumstance is held invalid, the remaining portions
8 of the section and their applicability to any person or circumstance
9 shall remain valid and enforceable.

10 K. EFFECTIVE DATE. This section shall become effective upon
11 enactment and shall apply to all actions commenced on or after the
12 effective date and to all pending actions in which trial has not
13 been scheduled or in which trial has been scheduled in excess of
14 ninety (90) days after the effective date.

15 SECTION 14. AMENDATORY 23 O.S. 2001, Section 9.1, as
16 amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2008,
17 Section 9.1), is amended to read as follows:

18 Section 9.1 A. In an action for the breach of an obligation
19 not arising from contract, the jury, in addition to actual damages,
20 may, subject to the provisions and limitations in subsections B, C
21 and D of this section and Section 15 of this act, award punitive
22 damages for the sake of example and by way of punishing the
23 defendant based upon the following factors:

24

- 1 1. The seriousness of the hazard to the public arising from the
- 2 defendant's misconduct;
- 3 2. The profitability of the misconduct to the defendant;
- 4 3. The duration of the misconduct and any concealment of it;
- 5 4. The degree of the defendant's awareness of the hazard and of
- 6 its excessiveness;
- 7 5. The attitude and conduct of the defendant upon discovery of
- 8 the misconduct or hazard;
- 9 6. In the case of a defendant which is a corporation or other
- 10 entity, the number and level of employees involved in causing or
- 11 concealing the misconduct; and
- 12 7. The financial condition of the defendant.

13 B. Category I. Where the jury finds by clear and convincing
14 evidence that:

- 15 1. The defendant has been guilty of reckless disregard for the
- 16 rights of others; or
- 17 2. An insurer has recklessly disregarded its duty to deal
- 18 fairly and act in good faith with its insured; the jury, in a
- 19 separate proceeding conducted after the jury has made such finding
- 20 and awarded actual damages, may award punitive damages in an amount
- 21 not to exceed the greater of:
 - 22 a. One Hundred Thousand Dollars (\$100,000.00), or
 - 23 b. the amount of the actual damages awarded.

24

1 Any award of punitive damages under this subsection awarded in any
2 manner other than as required in this subsection shall be void and
3 reversible error.

4 C. Category II. Where the jury finds by clear and convincing
5 evidence that:

6 1. The defendant has acted intentionally and with malice
7 towards others; or

8 2. An insurer has intentionally and with malice breached its
9 duty to deal fairly and act in good faith with its insured;
10 the jury, in a separate proceeding conducted after the jury has made
11 such finding and awarded actual damages, may award punitive damages
12 in an amount not to exceed the greatest of:

- 13 a. Five Hundred Thousand Dollars (\$500,000.00),
- 14 b. twice the amount of actual damages awarded, or
- 15 c. the increased financial benefit derived by the
16 defendant or insurer as a direct result of the conduct
17 causing the injury to the plaintiff and other persons
18 or entities.

19 The trial court shall reduce any award for punitive damages awarded
20 pursuant to the provisions of subparagraph c of this paragraph by
21 the amount it finds the defendant or insurer has previously paid as
22 a result of all punitive damage verdicts entered in any court of
23 this state for the same conduct by the defendant or insurer. Any
24 award of punitive damages under this subsection awarded in any

1 manner other than as required in this subsection shall be void and
2 reversible error.

3 D. Category III. Where the jury finds by clear and convincing
4 evidence that:

5 1. The defendant has acted intentionally and with malice
6 towards others; or

7 2. An insurer has intentionally and with malice breached its
8 duty to deal fairly and act in good faith with its insured; and the
9 court finds, on the record and out of the presence of the jury, that
10 there is evidence beyond a reasonable doubt that the defendant or
11 insurer acted intentionally and with malice and engaged in conduct
12 life-threatening to humans,
13 the jury, in a separate proceeding conducted after the jury has made
14 such finding and awarded actual damages, may award punitive damages
15 in any amount the jury deems appropriate, without regard to the
16 limitations set forth in subsections B and C of this section. Any
17 award of punitive damages under this subsection awarded in any
18 manner other than as required in this subsection shall be void and
19 reversible error.

20 E. In determining the amount, if any, of punitive damages to be
21 awarded under either subsection B, C or D of this section, the jury
22 shall make the award based upon the factors set forth in subsection
23 A of this section.

24

1 F. The provisions of this section are severable, and if any
2 part or provision thereof shall be held void, the decision of the
3 court shall not affect or impair any of the remaining parts or
4 provisions thereof.

5 G. This section shall apply to all civil actions filed after
6 the effective date of this act.

7 SECTION 15. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is
9 created a duplication in numbering, reads as follows:

10 A. Notwithstanding the provisions of Section 9.1 of Title 23 of
11 the Oklahoma Statutes or any other provision of the laws of this
12 state, in a professional liability action the jury may only award
13 punitive damages, in addition to actual damages, if the jury finds
14 by clear and convincing evidence that the defendant has been guilty
15 of intentional or gross negligence.

16 B. Any punitive damages shall be awarded in a separate
17 proceeding conducted after the jury has made the finding required by
18 subsection A of this section and has awarded actual damages.

19 SECTION 16. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 9.3 of Title 23, unless there is
21 created a duplication in numbering, reads as follows:

22 A. As used in this section:

23 1. "Future damages" means damages that are incurred after the
24 date of judgment for:

- 1 a. medical, health care, or custodial care services,
- 2 b. physical pain and mental anguish, disfigurement, or
- 3 physical impairment,
- 4 c. loss of consortium, companionship, or society, or
- 5 d. loss of earnings;

6 2. "Future loss of earnings" means the following losses
7 incurred after the date of the judgment:

- 8 a. loss of income, wages, or earning capacity and other
- 9 pecuniary losses, or
- 10 b. loss of inheritance; and

11 3. "Periodic payments" means the payment of money or its
12 equivalent to the recipient of future damages at defined intervals.

13 B. This section shall apply only to an action in which the
14 present value of the award of future damages, as determined by the
15 court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00).

16 C. Upon request of a party, the court shall order that medical,
17 health care, or custodial services awarded in an action be paid in
18 whole or in part in periodic payments rather than by a lump-sum
19 payment. Upon request of a party, the court may order that future
20 damages other than medical, health care, or custodial services
21 awarded in a health care liability action be paid in whole or in
22 part in periodic payments rather than by a lump-sum payment.

23 D. The court shall make a specific finding of the dollar amount
24 of periodic payments that will compensate the plaintiff for the

1 future damages. The court shall specify in its judgment ordering
2 the payment of future damages by periodic payments the:

- 3 1. Recipient of the payments;
- 4 2. Dollar amount of the payments;
- 5 3. Interval between payments; and
- 6 4. Number of payments or the period of time over which payments
7 must be made.

8 E. The entry of an order for the payment of future damages by
9 periodic payments constitutes a release of the health care liability
10 claim filed by the plaintiff.

11 F. As a condition to authorizing periodic payments of future
12 damages, the court shall require a defendant who is not adequately
13 insured to provide evidence of financial responsibility in an amount
14 adequate to assure full payment of damages awarded by the judgment.
15 The judgment shall provide for payments to be funded by:

- 16 1. An annuity contract issued by a company licensed to do
17 business as an insurance company, including an assignment within the
18 meaning of Section 130, Internal Revenue Code of 1986, as amended;
- 19 2. An obligation of the United States;
- 20 3. Applicable and collectible liability insurance from one or
21 more qualified insurers; or
- 22 4. Any other satisfactory form of funding approved by the
23 court.

24

1 G. On termination of periodic payments of future damages, the
2 court shall order the return of the security, or as much as remains,
3 to the defendant.

4 H. On the death of the recipient, money damages awarded for
5 loss of future earnings shall continue to be paid to the estate of
6 the recipient of the award without reduction. Following the
7 satisfaction or termination of any obligations specified in the
8 judgment for periodic payments, any obligation of the defendant
9 health care provider to make further payments ends, and any security
10 given reverts to the defendant.

11 I. For purposes of computing the award of attorney fees when
12 the plaintiff is awarded a recovery that will be paid in periodic
13 payments, the court shall place a total value on the payments based
14 on the plaintiff's projected life expectancy and reduce the amount
15 to present value.

16 SECTION 17. AMENDATORY Section 18, Chapter 368, O.S.L.
17 2004 (23 O.S. Supp. 2008, Section 15), is amended to read as
18 follows:

19 Section 15. A. Except as provided in ~~subsections~~ subsection B
20 ~~and C~~ of this section, in any civil action based on fault and not
21 arising out of contract, the liability for damages caused by two or
22 more persons shall be several only and a joint tortfeasor shall be
23 liable only for the amount of damages allocated to that tortfeasor.

24

1 B. ~~A defendant shall be jointly and severally liable for the~~
2 ~~damages recoverable by the plaintiff if the percentage of~~
3 ~~responsibility attributed to the defendant with respect to a cause~~
4 ~~of action is greater than fifty percent (50%).~~

5 C. If at the time the incident which gave rise to the cause of
6 action occurred, ~~any a joint tortfeasors~~ tortfeasor acted with
7 willful and wanton conduct or with reckless disregard of the
8 consequences of the conduct and such conduct proximately caused the
9 damages legally recoverable by the plaintiff, the liability for
10 damages shall be joint and several as to any such tortfeasor.

11 ~~D. This section shall not apply to actions brought by the state~~
12 ~~or a political subdivision of the state or any action in which no~~
13 ~~comparative negligence is found to be attributable to the plaintiff.~~

14 ~~E. C.~~ The provisions of this section shall apply to all civil
15 actions based on fault and not arising out of contract that accrue
16 on or after November 1, ~~2004~~ 2009.

17 SECTION 18. AMENDATORY 23 O.S. 2001, Section 61, is
18 amended to read as follows:

19 Section 61. A. For the breach of an obligation not arising
20 from contract, the measure of damages, except where otherwise
21 expressly provided by ~~this chapter~~ law, is the amount which will
22 compensate for all detriment proximately caused thereby, whether it
23 could have been anticipated or not.

1 B. For the breach of an obligation not arising from contract,
2 if the plaintiff receives compensation or is to receive compensation
3 in the future for the injuries or harm that gave rise to the cause
4 of action from a source wholly independent of the defendant, such
5 fact shall be admitted into evidence and the amount shall be
6 deducted from the amount of damages that the plaintiff recovers from
7 the defendant.

8 SECTION 19. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 61.2 of Title 23, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Except as provided in subsection B of this section, in any
12 action not arising out of contract, the amount of noneconomic
13 damages awarded shall not exceed Three Hundred Thousand Dollars
14 (\$300,000.00), regardless of the number of parties against whom the
15 action is brought or the number of actions brought with respect to
16 the personal injury. The dollar amount prescribed by this
17 subsection shall be adjusted annually based upon any positive
18 increase in the Consumer Price Index that measures the average
19 changes in prices of goods and services purchased by urban wage
20 earners and clerical workers' families and single workers living
21 alone (CPI-W) for the preceding calendar year. The adjustment
22 required by this subsection shall be made by the State Treasurer and
23 certified to the Administrative Director of the Courts on April 1 of
24 each year or not later than thirty (30) days after the date upon

1 | which the Bureau of Labor Statistics releases the CPI-W inflationary
2 | data for the preceding calendar year, whichever date first occurs.
3 | No adjustment to the dollar amount prescribed by this subsection
4 | shall be made for any year in which there is a decline in the
5 | Consumer Price Index.

6 | B. If the jury finds by clear and convincing evidence that the
7 | acts of the party which caused the damages were grossly negligent or
8 | committed intentionally or with malice toward others, and the court
9 | finds, on the record and out of the presence of the jury that there
10 | is evidence beyond a reasonable doubt that the defendant was grossly
11 | negligent or acted intentionally or with malice toward others, the
12 | jury in a separate proceeding, conducted after the jury has made
13 | such a finding and awarded actual damages, may award noneconomic
14 | damages in an amount the jury deems appropriate without regard to
15 | the limitation set forth in subsection A of this section. Any award
16 | of noneconomic damages under this subsection awarded in any manner
17 | other than as required in this section shall be void and reversible.

18 | C. As used in this section, "noneconomic damages" means all
19 | subjective, nonmonetary losses including, but not limited to, pain,
20 | suffering, inconvenience, mental anguish, emotional distress, loss
21 | of society and companionship, loss of consortium, injury to
22 | reputation and humiliation; provided, however, noneconomic damages
23 | do not include exemplary damages, as provided for in Section 9.1 of
24 | Title 23 of the Oklahoma Statutes.

1 D. Nothing in this section shall apply to an action brought for
2 wrongful death.

3 E. The provisions of this section shall apply only to actions
4 that accrue on or after November 1, 2009.

5 SECTION 20. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 61.3 of Title 23, unless there
7 is created a duplication in numbering, reads as follows:

8 A. If any plaintiff seeks recovery for loss of earnings, loss
9 of earning capacity, loss of contributions of a pecuniary value, or
10 loss of inheritance, evidence to prove the loss must be presented in
11 the form of a net loss after reduction for income tax payments or
12 unpaid tax liability pursuant to any state or federal income tax
13 law.

14 B. The court shall instruct the jury as to whether any recovery
15 sought by the plaintiff is subject to federal or state income taxes.

16 SECTION 21. AMENDATORY 47 O.S. 2001, Section 11-1112, as
17 last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.
18 2008, Section 11-1112), is amended to read as follows:

19 Section 11-1112. A. Every driver, when transporting a child
20 under six (6) years of age in a motor vehicle operated on the
21 roadways, streets, or highways of this state, shall provide for the
22 protection of said child by properly using a child passenger
23 restraint system. For purposes of this section and Section 11-1113
24 of this title, "child passenger restraint system" means an infant or

1 child passenger restraint system which meets the federal standards
2 as set by 49 C.F.R., Section 571.213.

3 B. Children at least six (6) years of age but younger than
4 thirteen (13) years of age shall be protected by use of a child
5 passenger restraint system or a seat belt.

6 C. The provisions of this section shall not apply to:

7 1. The driver of a school bus, taxicab, moped, motorcycle, or
8 other motor vehicle not required to be equipped with safety belts
9 pursuant to state or federal laws;

10 2. The driver of an ambulance or emergency vehicle;

11 3. The driver of a vehicle in which all of the seat belts are
12 in use;

13 4. The transportation of children who for medical reasons are
14 unable to be placed in such devices; or

15 5. The transportation of a child who weighs more than forty
16 (40) pounds and who is being transported in the back seat of a
17 vehicle while wearing only a lap safety belt when the back seat of
18 the vehicle is not equipped with combination lap and shoulder safety
19 belts, or when the combination lap and shoulder safety belts in the
20 back seat are being used by other children who weigh more than forty
21 (40) pounds. Provided, however, for purposes of this paragraph,
22 back seat shall include all seats located behind the front seat of a
23 vehicle operated by a licensed child care facility or church.

24 Provided further, there shall be a rebuttable presumption that a

1 child has met the weight requirements of this paragraph if at the
2 request of any law enforcement officer, the licensed child care
3 facility or church provides the officer with a written statement
4 verified by the parent or legal guardian that the child weighs more
5 than forty (40) pounds.

6 D. A law enforcement officer is hereby authorized to stop a
7 vehicle if it appears that the driver of the vehicle has violated
8 the provisions of this section and to give an oral warning to said
9 driver. The warning shall advise the driver of the possible danger
10 to children resulting from the failure to install or use a child
11 passenger restraint system or seat belts in the motor vehicle.

12 ~~E. A violation of the provisions of this section shall not be~~
13 ~~admissible as evidence in any civil action or proceeding for~~
14 ~~damages.~~

15 ~~F.~~ In any action brought by or on behalf of an infant for
16 personal injuries or wrongful death sustained in a motor vehicle
17 collision, the failure of any person to have the infant properly
18 restrained in accordance with the provisions of this section shall
19 not be used in aggravation or mitigation of damages.

20 ~~G.~~ F. Any person convicted of violating subsection A or B of
21 this section shall be punished by a fine of Fifty Dollars (\$50.00)
22 and shall pay all court costs thereof. Revenue from such fine shall
23 be apportioned to the Department of Public Safety Revolving Fund and
24 used by the Oklahoma Highway Safety Office to promote the use of

1 child passenger restraint systems as provided in Section 11-1113 of
2 this title. This fine shall be suspended and the court costs
3 limited to a maximum of Fifteen Dollars (\$15.00) in the case of the
4 first offense upon proof of purchase or acquisition by loan of a
5 child passenger restraint system. Provided, the Department of
6 Public Safety shall not assess points to the driving record of any
7 person convicted of a violation of this section.

8 SECTION 22. AMENDATORY Section 7, Chapter 390, O.S.L.
9 2003 (63 O.S. Supp. 2008, Section 1-1708.1G), is amended to read as
10 follows:

11 Section 1-1708.1G Notwithstanding ~~the provisions of Section 727~~
12 ~~of Title 12 of the Oklahoma Statutes or~~ any other provision of the
13 Oklahoma Statutes to the contrary, prejudgment interest in a medical
14 liability action shall be determined using a rate equal to the
15 average United States Treasury Bill rate of the preceding calendar
16 year as certified to the Administrative Director of the Courts by
17 the State Treasurer on the first regular business day in January of
18 each year. Prejudgment interest shall accrue from the time provided
19 in subsection E of Section 727.1 of Title 12 of the Oklahoma
20 Statutes.

21 SECTION 23. AMENDATORY 63 O.S. 2001, Section 1-1709.1,
22 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.
23 Supp. 2008, Section 1-1709.1), is amended to read as follows:

24 Section 1-1709.1 A. As used in this section:

1 1. "Credentialing or recredentialing data" means:

- 2 a. the application submitted by a health care
3 professional requesting appointment or reappointment
4 to the medical staff of a health care facility or
5 requesting clinical privileges or other permission to
6 provide health care services at a health care
7 facility,
8 b. any information submitted by the health care
9 professional in support of such application,
10 c. any information, unless otherwise privileged, obtained
11 by the health care facility during the credentialing
12 or recredentialing process regarding such application,
13 and
14 d. the decision made by the health care facility
15 regarding such application;

16 2. "Credentialing or recredentialing process" means any
17 process, program or proceeding utilized by a health care facility to
18 assess, review, study or evaluate the credentials of a health care
19 professional;

20 3. "Health care facility" means:

- 21 a. any hospital or related institution offering or
22 providing health care services under a license issued
23 pursuant to Section 1-706 of this title,
24

1 b. any ambulatory surgical center offering or providing
2 health care services under a license issued pursuant
3 to Section 2660 of this title, and

4 c. the clinical practices of accredited allopathic and
5 osteopathic state medical schools;

6 4. "Health care professional" means any person authorized to
7 practice allopathic medicine and surgery, osteopathic medicine,
8 podiatric medicine, optometry, chiropractic, psychology, dentistry
9 or a dental specialty under a license issued pursuant to Title 59 of
10 the Oklahoma Statutes;

11 5. "Peer review information" means all records, documents and
12 other information generated during the course of a peer review
13 process, including any reports, statements, memoranda,
14 correspondence, record of proceedings, materials, opinions,
15 findings, conclusions and recommendations, credentialing data and
16 recredentialing data, but does not include:

17 a. the medical records of a patient whose health care in
18 a health care facility is being reviewed,

19 b. incident reports and other like documents regarding
20 health care services being reviewed, regardless of how
21 the reports or documents are titled or captioned,

22 c. the identity of any individuals who have personal
23 knowledge regarding the facts and circumstances
24

1 surrounding the patient's health care in the health
2 care facility,

3 d. factual statements regarding the patient's health care
4 in the health care facility from any individuals who
5 have personal knowledge regarding the facts and
6 circumstances surrounding the patient's health care,
7 which factual statements were generated outside the
8 peer review process,

9 e. the identity of all documents and raw data previously
10 created elsewhere and considered during the peer
11 review process, or

12 f. copies of all documents and raw data previously
13 created elsewhere and considered during the peer
14 review process, whether available elsewhere or not, ~~or~~

15 ~~g. credentialing or recredentialing data regarding the~~
16 ~~health care professional who provided the health care~~
17 ~~services being reviewed or who is the subject of a~~
18 ~~credentialing or recredentialing process; and~~

19 6. "Peer review process" means any process, program or
20 proceeding, including a credentialing or recredentialing process,
21 utilized by a health care facility or county medical society to
22 assess, review, study or evaluate the credentials, competence,
23 professional conduct or health care services of a health care
24 professional.

1 B. 1. Peer review information shall be private, confidential
2 and privileged~~+~~

3 ~~a.~~ except that a health care facility or county medical
4 society shall be permitted to provide relevant peer
5 review information to the state agency or board which
6 licensed the health care professional who provided the
7 health care services being reviewed in a peer review
8 process or who is the subject of a credentialing or
9 recredentialing process, with notice to the health
10 care professional,~~and~~

11 ~~b.~~ ~~except as provided in subsections C and D of this~~
12 ~~section.~~

13 2. Nothing in this section shall be construed to abrogate,
14 alter or affect any provision in the Oklahoma Statutes which
15 provides that information regarding liability insurance of a health
16 care facility or health care professional is not discoverable or
17 admissible.

18 C. In any civil action in which a patient or patient's legal
19 representative has alleged that the patient has suffered injuries
20 resulting from negligence by a health care professional in providing
21 health care services to the patient in a health care facility,
22 factual statements, presented during a peer review process utilized
23 by such health care facility, regarding the patient's health care in
24 the health care facility from individuals who have personal

1 knowledge of the facts and circumstances surrounding the patient's
2 health care shall not be subject to discovery, ~~pursuant to the~~
3 ~~Oklahoma Discovery Code, upon an affirmative showing that such~~
4 ~~statements are not otherwise available in any other manner.~~

5 D. ~~1.~~ In any civil action in which a patient or patient's
6 legal representative has alleged:

7 a. ~~that~~

8 1. That the patient has suffered injuries resulting from
9 negligence by a health care professional in providing health care
10 services to the patient in a health care facility~~;~~i or

11 b. ~~that~~

12 2. That the health care facility was independently negligent as
13 a result of permitting the health care professional to provide
14 health care services to the patient in the health care facility,
15 the recommendations made and action taken as a result of any peer
16 review process utilized by such health care facility regarding the
17 health care professional prior to the date of the alleged negligence
18 shall not be subject to discovery pursuant to the Oklahoma Discovery
19 Code or admissible at trial.

20 ~~2. Any information discovered pursuant to this subsection :~~

21 a. ~~shall not be admissible as evidence until a judge or~~
22 ~~jury has found the health care professional to have~~
23 ~~been negligent in providing health care services to~~
24 ~~the patient in such health care facility, and~~

1 ~~b. shall not at any time include the identity or means by~~
2 ~~which to ascertain the identity of any other patient~~
3 ~~or health care professional.~~

4 E. Any information discovered pursuant to a claim of
5 independent negligence against a health care facility shall not be
6 admissible as evidence until a judge or jury has first found the
7 health care professional to have been negligent in providing health
8 care services to the patient in such health care facility.

9 F. No person involved in a peer review process may be permitted
10 or required to testify regarding the peer review process in any
11 civil proceeding or disclose by responses to written discovery
12 requests any peer review information.

13 SECTION 24. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1924.1 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 The Legislature finds that:

17 1. Skilled nursing facilities, as defined in 42 U.S.C., Section
18 1395i-3, participating in the Medicare program and nursing
19 facilities, as defined in 42 U.S.C., Section 1396r, participating in
20 the Medicaid program are required to establish and maintain quality
21 assessment and assurance committees to identify issues with respect
22 to which quality assessment and assurance activities are necessary
23 and to develop and implement appropriate plans of action to correct
24 identified quality deficiencies pursuant to 42 U.S.C., Sections

1 1395i-3 and 1396r and rules promulgated by the State Department of
2 Health;

3 2. The Centers for Medicare and Medicaid Services and the State
4 Department of Health have recognized the effectiveness of such
5 quality assessment and assurance programs to measure, monitor and
6 improve the quality of care furnished by skilled nursing facilities
7 and nursing facilities;

8 3. The threat of liability for private money damages or civil
9 money penalties under federal and state law unreasonably discourages
10 skilled nursing facilities, nursing facilities, health care
11 professionals and other health care providers from conducting or
12 participating in effective quality assessment and assurance
13 activities and medical error review activities;

14 4. There is an overriding national and state need to provide
15 incentives and protection for individuals and entities engaging in
16 quality assessment and assurance and medical error review
17 activities; and

18 5. The Minimum Data Set (MDS) contains clinical information
19 from the comprehensive assessments of persons residing in long-term
20 care facilities and is used by federal and state regulators for the
21 survey and certification of Medicare and Medicaid long-term care
22 facilities to study the effectiveness and quality of care given in
23 those facilities, and to support other regulatory, reimbursement,
24 policy and research functions.

1 SECTION 25. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1924.2 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 For purposes of Sections 24 through 28 of this act:

5 1. "Quality assessment and assurance activities" means
6 activities performed by a health care provider for the purpose of
7 evaluating matters relating to patient safety and quality of care,
8 or health resources management review and identification and
9 prevention of medical incidents and risks, and shall include without
10 limitation peer review activities, quality assessment and assurance
11 committee activities and patient care assessment;

12 2. "Quality assessment and assurance committee" means any
13 committee of a skilled nursing facility or a nursing facility which
14 conducts quality assessment and assurance activities;

15 3. "Quality assessment and assurance committee records" means
16 documents and other information in whatever form:

17 a. submitted to, reviewed or generated by, or produced at
18 the request of a quality assessment and assurance
19 committee for purposes of quality assessment,
20 assurance or improvement, including without limitation
21 proceedings, records, reports, statements, notes,
22 incident reports, memoranda, minutes, conclusions,
23 deliberations, findings, and internal working papers,
24 or

1 b. submitted or reported by a skilled nursing facility or
2 a nursing facility to an accredited organization,
3 trade association, or other entity for purposes of
4 improving quality of care in the skilled nursing
5 facility or the nursing facility industry;

6 4. "Statements of deficiencies" means information respecting
7 surveys and certifications made regarding a skilled nursing facility
8 or a nursing facility including, but not limited to, federal and
9 state survey reports, citation reports, statements of deficiencies,
10 plans of correction or similar findings of noncompliance with
11 statutory or regulatory requirements or standards; and

12 5. "Minimum Data Set (MDS) related documentation" means
13 documents and other information in whatever form related to the
14 reporting of resident assessment data by skilled nursing facilities
15 or nursing facilities for inclusion in the Minimum Data Set (MDS).

16 SECTION 26. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1924.3 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Quality assessment and assurance committee records shall be
20 confidential and privileged. Such records shall not be disclosed to
21 any person or entity and are privileged for purposes of state
22 judicial proceedings in civil matters and for purposes of state
23 administrative proceedings, including with respect to discovery and
24 subpoenas.

1 B. A person who reviews or creates quality assessment and
2 assurance committee records or who participates in any proceeding
3 that reviews or creates such records may not be permitted or
4 required to testify in any civil judicial or administrative
5 proceeding with respect to such records or with respect to any
6 finding, recommendation, evaluation, opinion, or action taken by
7 such person or body in connection with such records.

8 SECTION 27. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1924.4 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A quality assessment and assurance committee, any person
12 acting as a member of or staff to such committee, and any person who
13 participates with or assists such committee regarding its activities
14 shall not be liable in damages under any law of the state or
15 political subdivision thereof with respect to the quality assessment
16 and assurance activities of such quality assessment and assurance
17 committee.

18 B. Notwithstanding any other provision of law, no member of a
19 quality assessment and assurance committee or person providing
20 information to a quality assessment and assurance body shall be
21 held, by reason of participation in quality assessment and assurance
22 activities, liable in damages under any law of the state or
23 political subdivision thereof unless such individual provided false
24 information with the knowledge that such information was false.

1 SECTION 28. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1924.5 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 Statements of deficiencies issued by any federal or state entity
5 to a skilled nursing facility or a nursing facility and such
6 facility's Minimum Data Set (MDS) related documentation may not be
7 admitted into evidence in any state judicial or administrative
8 proceeding unless:

9 1. The deficiency determination is final, adjudicated and has
10 been appealed;

11 2. The deficiency determination or Minimum Data Set (MDS)
12 related documentation is otherwise admissible under the State Rules
13 of Civil Procedure, as applicable; and

14 3. The statements of deficiencies, plans of correction or
15 Minimum Data Set (MDS) related documentation are directly related to
16 the harm allegedly caused to the patient that is the subject of the
17 proceeding.

18 Statements of deficiencies, plans of correction and Minimum Data
19 Set (MDS) related documentation may not be admitted into evidence in
20 any judicial or administrative proceeding for purposes of
21 establishing a standard of care or negligence as a matter of law.

22 SECTION 29. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 24-206 of Title 70, unless there
24 is created a duplication in numbering, reads as follows:

1 Sections 29 through 33 of this act shall be known and may be
2 cited as the "School Protection Act".

3 SECTION 30. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 24-207 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 The purpose of the School Protection Act is to provide teachers,
7 principals, and other school professionals the tools they need to
8 undertake reasonable actions to maintain order, discipline, and an
9 appropriate educational environment.

10 SECTION 31. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 24-208 of Title 70, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Except as otherwise provided in this section, any person
14 eighteen (18) years of age or older who acts with specific intent in
15 making a false accusation of criminal activity against an education
16 employee to law enforcement authorities or school district
17 officials, or both, shall be guilty of a misdemeanor and, upon
18 conviction, punished by a fine of not more than Two Thousand Dollars
19 (\$2,000.00).

20 B. Except as otherwise provided in this section, any student
21 between seven (7) years of age and seventeen (17) years of age who
22 acts with specific intent in making a false accusation of criminal
23 activity against an education employee to law enforcement
24 authorities or school district officials, or both, shall, upon

1 conviction, at the discretion of the court, be subject to any of the
2 following:

3 1. Community service of a type and for a period of time to be
4 determined by the court; or

5 2. Any other sanction as the court in its discretion may deem
6 appropriate.

7 C. The provisions of this section shall not apply to statements
8 regarding individuals elected or appointed to an educational entity.

9 D. This section is in addition to and does not limit the civil
10 or criminal liability of a person who makes false statements
11 alleging criminal activity by another.

12 SECTION 32. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 24-209 of Title 70, unless there
14 is created a duplication in numbering, reads as follows:

15 Unless otherwise provided by law, the existence of any policy of
16 insurance indemnifying a school or an education employee against
17 liability for damages is not a waiver of any defense otherwise
18 available to the educational entity or its employees in the defense
19 of the claim.

20 SECTION 33. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 24-210 of Title 70, unless there
22 is created a duplication in numbering, reads as follows:

23 The School Protection Act shall be in addition to the
24 Governmental Tort Claims Act or any other applicable law.

1 SECTION 34. AMENDATORY 51 O.S. 2001, Section 155, as
2 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.
3 2008, Section 155), is amended to read as follows:

4 Section 155. The state or a political subdivision shall not be
5 liable if a loss or claim results from:

6 1. Legislative functions;

7 2. Judicial, quasi-judicial, or prosecutorial functions, other
8 than claims for wrongful criminal felony conviction resulting in
9 imprisonment provided for in Section 154 of this title;

10 3. Execution or enforcement of the lawful orders of any court;

11 4. Adoption or enforcement of or failure to adopt or enforce a
12 law, whether valid or invalid, including, but not limited to, any
13 statute, charter provision, ordinance, resolution, rule, regulation
14 or written policy;

15 5. Performance of or the failure to exercise or perform any act
16 or service which is in the discretion of the state or political
17 subdivision or its employees;

18 6. Civil disobedience, riot, insurrection or rebellion or the
19 failure to provide, or the method of providing, police, law
20 enforcement or fire protection;

21 7. Any claim based on the theory of attractive nuisance;

22 8. Snow or ice conditions or temporary or natural conditions on
23 any public way or other public place due to weather conditions,
24

1 unless the condition is affirmatively caused by the negligent act of
2 the state or a political subdivision;

3 9. Entry upon any property where that entry is expressly or
4 implied authorized by law;

5 10. Natural conditions of property of the state or political
6 subdivision;

7 11. Assessment or collection of taxes or special assessments,
8 license or registration fees, or other fees or charges imposed by
9 law;

10 12. Licensing powers or functions including, but not limited
11 to, the issuance, denial, suspension or revocation of or failure or
12 refusal to issue, deny, suspend or revoke any permit, license,
13 certificate, approval, order or similar authority;

14 13. Inspection powers or functions, including failure to make
15 an inspection, review or approval, or making an inadequate or
16 negligent inspection, review or approval of any property, real or
17 personal, to determine whether the property complies with or
18 violates any law or contains a hazard to health or safety, or fails
19 to conform to a recognized standard;

20 14. Any loss to any person covered by any workers' compensation
21 act or any employer's liability act;

22 15. Absence, condition, location or malfunction of any traffic
23 or road sign, signal or warning device unless the absence,
24 condition, location or malfunction is not corrected by the state or

1 political subdivision responsible within a reasonable time after
2 actual or constructive notice or the removal or destruction of such
3 signs, signals or warning devices by third parties, action of
4 weather elements or as a result of traffic collision except on
5 failure of the state or political subdivision to correct the same
6 within a reasonable time after actual or constructive notice.
7 Nothing herein shall give rise to liability arising from the failure
8 of the state or any political subdivision to initially place any of
9 the above signs, signals or warning devices. The signs, signals and
10 warning devices referred to herein are those used in connection with
11 hazards normally connected with the use of roadways or public ways
12 and do not apply to the duty to warn of special defects such as
13 excavations or roadway obstructions;

14 16. Any claim which is limited or barred by any other law;

15 17. Misrepresentation, if unintentional;

16 18. An act or omission of an independent contractor or
17 consultant or his or her employees, agents, subcontractors or
18 suppliers or of a person other than an employee of the state or
19 political subdivision at the time the act or omission occurred;

20 19. Theft by a third person of money in the custody of an
21 employee unless the loss was sustained because of the negligence or
22 wrongful act or omission of the employee;

23

24

1 20. Participation in or practice for any interscholastic or
2 other athletic contest sponsored or conducted by or on the property
3 of the state or a political subdivision;

4 21. Participation in any activity approved by a local board of
5 education and held within a building or on the grounds of the school
6 district served by that local board of education before or after
7 normal school hours or on weekends;

8 22. Any court-ordered or Department of Corrections-approved
9 work release program; provided, however, this provision shall not
10 apply to claims from individuals not in the custody of the
11 Department of Corrections based on accidents involving motor
12 vehicles owned or operated by the Department of Corrections;

13 23. The activities of the National Guard, the militia or other
14 military organization administered by the Military Department of the
15 state when on duty pursuant to the lawful orders of competent
16 authority:

- 17 a. in an effort to quell a riot,
- 18 b. in response to a natural disaster or military attack,
- 19 or
- 20 c. if participating in a military mentor program ordered
21 by the court;

22 24. Provision, equipping, operation or maintenance of any
23 prison, jail or correctional facility, or injuries resulting from
24 the parole or escape of a prisoner or injuries by a prisoner to any

1 other prisoner; provided, however, this provision shall not apply to
2 claims from individuals not in the custody of the Department of
3 Corrections based on accidents involving motor vehicles owned or
4 operated by the Department of Corrections;

5 25. Provision, equipping, operation or maintenance of any
6 juvenile detention facility, or injuries resulting from the escape
7 of a juvenile detainee, or injuries by a juvenile detainee to any
8 other juvenile detainee;

9 26. Any claim or action based on the theory of manufacturer's
10 products liability or breach of warranty, either expressed or
11 implied;

12 27. Any claim or action based on the theory of indemnification
13 or subrogation;

14 28. Any claim based upon an act or omission of an employee in
15 the placement of children;

16 29. Acts or omissions done in conformance with then current
17 recognized standards;

18 30. Maintenance of the state highway system or any portion
19 thereof unless the claimant presents evidence which establishes
20 either that the state failed to warn of the unsafe condition or that
21 the loss would not have occurred but for a negligent affirmative act
22 of the state;

23 31. Any confirmation of the existence or nonexistence of any
24 effective financing statement on file in the office of the Secretary

1 of State made in good faith by an employee of the office of the
2 Secretary of State as required by the provisions of Section 1-9-
3 320.6 of Title 12A of the Oklahoma Statutes;

4 32. Any court-ordered community sentence; ~~or~~

5 33. Remedial action and any subsequent related maintenance of
6 property pursuant to and in compliance with an authorized
7 environmental remediation program, order, or requirement of a
8 federal or state environmental agency;

9 34. The use of necessary and reasonable force by a school
10 district employee to control and discipline a student during the
11 time the student is in attendance or in transit to and from the
12 school, or any other function authorized by the school district; or

13 35. Actions taken in good faith by a school district employee
14 for the out-of-school suspension of a student pursuant to applicable
15 Oklahoma Statutes.

16 SECTION 35. AMENDATORY 76 O.S. 2001, Section 5.5, is
17 amended to read as follows:

18 Section 5.5 A. Any claim filed herein shall be filed within
19 two (2) years of the date of injury, death or damage to property,
20 or, if applicable, within one (1) year of the date of a final
21 adjudication on any legal action taken by the claimant against any
22 person responsible for the injury, death or damage to property, or
23 be barred by limitations from recovery.

24

1 B. Any action for damages based in tort shall be brought within
2 eight (8) years from the date of the act or omission that gives rise
3 to the claim. This subsection is intended as a statute of repose,
4 and any action which is not brought within eight (8) years after the
5 act or omission giving rise to the claim is time-barred.

6 SECTION 36. AMENDATORY 76 O.S. 2001, Section 25, is
7 amended to read as follows:

8 Section 25. A. A professional review body, members and staff
9 of such professional review body and persons who contract with such
10 professional review body shall not be liable in any way in damages
11 under any law of this state with respect to a professional review
12 action taken in good faith by such professional review body.

13 B. Peer review information shall be private, confidential and
14 privileged except that a peer review body shall be permitted to
15 provide relevant peer review information to a state agency or board
16 which licensed the professional whose competence and performance is
17 being reviewed in a peer review process or who is the subject of a
18 credentialing or recredentialing process. Notice that the
19 information is being provided to a state agency or board shall be
20 given to the professional.

21 C. In any civil action in which a plaintiff or legal
22 representative of a plaintiff has alleged that the plaintiff has
23 suffered injuries resulting from the negligence of the professional
24 in providing professional services to the plaintiff, factual

1 statements, opinions and conclusions, presented during a peer review
2 process, shall not be subject to discovery or admissible at trial.

3 D. In any civil action in which a plaintiff or legal
4 representative of a plaintiff has alleged that the plaintiff has
5 suffered injuries resulting from the negligence of the professional
6 in providing professional services to the plaintiff, the
7 recommendations made and action taken as a result of any peer review
8 process shall not be subject to discovery or admissible at trial.

9 E. No person involved in a peer review process may testify
10 regarding the peer review process in any civil proceeding or
11 disclose by responses to written discovery requests any peer review
12 information.

13 SECTION 37. AMENDATORY 76 O.S. 2001, Section 31, is
14 amended to read as follows:

15 Section 31. A. Any volunteer shall be immune from liability in
16 a civil action on the basis of any act or omission of the volunteer
17 resulting in damage or injury if:

18 1. The volunteer was acting in good faith and within the scope
19 of the volunteer's official functions and duties for a charitable
20 organization or not-for-profit corporation; and

21 2. The damage or injury was not caused by gross negligence or
22 willful and wanton misconduct by the volunteer.

23 B. In any civil action against a charitable organization or
24 not-for-profit corporation for damages based upon the conduct of a

1 volunteer, the doctrine of respondeat superior shall apply,
2 notwithstanding the immunity granted to the volunteer in subsection
3 A of this section.

4 C. Any person who, in good faith and without compensation, or
5 expectation of compensation, donates or loans emergency service
6 equipment to a volunteer shall not be liable for damages resulting
7 from the use of such equipment by the volunteer, except when the
8 donor of the equipment knew or should have known that the equipment
9 was dangerous or faulty in a way which could result in bodily
10 injury, death or damage to property.

11 D. Definitions.

12 1. For the purposes of this section, the term "volunteer" means
13 a person who enters into a service or undertaking of the person's
14 free will without compensation or expectation of compensation in
15 money or other thing of value in order to provide a service, care,
16 assistance, advice, or other benefit ~~where the person does not offer~~
17 ~~that type of service, care, assistance, advice or other benefit for~~
18 ~~sale to the public~~; provided, being legally entitled to receive
19 compensation for the service or undertaking performed shall not
20 preclude a person from being considered a volunteer.

21 2. For the purposes of this section, the term "charitable
22 organization" means any benevolent, philanthropic, patriotic,
23 eleemosynary, educational, social, civic, recreational, religious

24

1 group or association or any other person performing or purporting to
2 perform acts beneficial to the public.

3 3. For the purposes of this section, the term "not-for-profit
4 corporation" means a corporation formed for a purpose not involving
5 pecuniary gain to its shareholders or members, paying no dividends
6 or other pecuniary remuneration, directly or indirectly, to its
7 shareholders or members as such, and having no capital stock.

8 E. The provisions of this section shall not affect the
9 liability that any person may have which arises from the operation
10 of a motor vehicle, watercraft, or aircraft in rendering the
11 service, care, assistance, advice or other benefit as a volunteer.

12 F. The immunity from civil liability provided for by this
13 section shall extend only to the actions taken by a person rendering
14 the service, care, assistance, advice, or other benefit as a
15 volunteer, and does not confer any immunity to any person for
16 actions taken by the volunteer prior to or after the rendering of
17 the service, care, assistance, advice, or other benefit as a
18 volunteer.

19 G. This section shall apply to all civil actions filed after
20 ~~the effective date of this act~~ August 25, 1995.

21 SECTION 38. AMENDATORY Section 34, Chapter 368, O.S.L.
22 2004 (76 O.S. Supp. 2008, Section 32), is amended to read as
23 follows:
24

1 Section 32. A. This section shall be known and may be cited as
2 the "Volunteer Medical Professional Services Immunity Act".

3 B. Any volunteer medical professional shall be immune from
4 liability in a civil action on the basis of any act or omission of
5 the volunteer medical professional resulting in damage or injury if:

6 1. The volunteer medical professional services were provided at
7 ~~a free clinic where neither the professional nor the clinic receives~~
8 without any kind of compensation being paid for ~~any~~ the treatment
9 provided ~~at the clinic~~;

10 2. The volunteer medical professional was acting in good faith
11 and, if licensed, the services provided were within the scope of the
12 license of the volunteer medical professional;

13 3. The volunteer medical professional commits the act or
14 omission in the course of providing professional services;

15 4. The damage or injury was not caused by gross negligence or
16 willful and wanton misconduct by the volunteer medical professional;
17 and

18 5. Before the volunteer medical professional provides
19 professional medical services, the volunteer medical professional
20 and the person receiving the services or, if that person is a minor
21 or otherwise legally incapacitated, the person's parent,
22 conservator, legal guardian, or other person with legal
23 responsibility for the care of the person signs a written statement
24 that acknowledges:

1 a. that the volunteer medical professional providing
2 professional medical services has no expectation of
3 and will receive no compensation of any kind for
4 providing the professional medical services, and

5 b. an understanding of the limitations on the recovery of
6 damages from the volunteer medical professional in
7 exchange for receiving free professional medical
8 services.

9 C. In the event the volunteer medical professional refers the
10 patient covered by this section to another volunteer medical
11 professional for additional treatment, the referred volunteer
12 medical professional shall be subject to the provisions of this
13 section if:

14 1. The referred volunteer medical professional provides
15 services without receiving any compensation for the treatment;

16 2. The referred volunteer medical professional was acting in
17 good faith and, if licensed, the services provided were within the
18 scope of the license of the referred volunteer medical professional;

19 3. The referred volunteer medical professional commits the act
20 or omission in the course of providing professional services;

21 4. The damage or injury was not caused by gross negligence or
22 willful and wanton misconduct by the referred volunteer medical
23 professional; and
24

1 5. Before the referred volunteer medical professional provides
2 professional services, the referred volunteer medical professional
3 and the person receiving the services or, if that person is a minor
4 or otherwise legally incapacitated, the person's parent,
5 conservator, legal guardian, or other person with legal
6 responsibility for the care of the person signs a written statement
7 that acknowledges:

8 a. that the referred volunteer medical professional
9 providing professional medical services has no
10 expectation of and will receive no compensation of any
11 kind for providing the professional medical services,
12 and

13 b. an understanding of the limitations on the recovery of
14 damages from the volunteer medical professional in
15 exchange for receiving free professional medical
16 services.

17 D. The provisions of this section shall not affect the
18 liability that any person may have which arises from the operation
19 of a motor vehicle, watercraft, or aircraft in rendering the
20 service, care, assistance, advice or other benefit as a volunteer
21 medical professional.

22 E. The immunity from civil liability provided by this section
23 shall extend only to the actions taken by a person rendering the
24 service, care, assistance, advice or other benefit as a volunteer

1 medical professional, and does not confer any immunity to any person
2 for actions taken by the volunteer medical professional prior to or
3 after the rendering of the service, care, assistance, advice or
4 other benefit as a volunteer medical professional.

5 F. For the purpose of this section, the term "volunteer medical
6 professional" and "referred volunteer medical professional" means a
7 person who voluntarily provides professional medical services
8 without compensation or expectation of compensation of any kind. A
9 volunteer medical professional or a referred volunteer medical
10 professional shall include the following licensed professionals:

- 11 1. Physician;
- 12 2. Physician's assistant;
- 13 3. Registered nurse;
- 14 4. Advanced nurse practitioner or vocational nurse;
- 15 5. Pharmacist;
- 16 6. Podiatrist;
- 17 7. Dentist or dental hygienist; or
- 18 8. Optometrist.

19 A volunteer medical professional shall be engaged in the active
20 practice of a medical professional or retired from a medical
21 profession, if still eligible to provide medical professional
22 services within this state.

23 G. Any person participating in a Medical Reserve Corps and
24 assisting with emergency management, emergency operations, or hazard

1 mitigation in response to any emergency, man-made disaster, or
2 natural disaster, or participating in public health initiatives
3 endorsed by a city, county or state health department in the State
4 of Oklahoma, shall not be liable for civil damages on the basis of
5 any act or omission, if:

- 6 1. The person was acting in good faith and within the scope of
7 the official duties and functions of the Medical Reserve Corps; and
- 8 2. The acts or omissions were not caused from gross, willful,
9 or wanton acts of negligence.

10 H. This section shall apply to all civil actions filed on or
11 after November 1, ~~2004~~ 2009.

12 SECTION 39. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

15 Sections 39 through 42 of this act shall be known and may be
16 cited as the "Common Sense Consumption Act".

17 SECTION 40. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 34 of Title 76, unless there is
19 created a duplication in numbering, reads as follows:

20 The intent of the Common Sense Consumption Act is to prevent
21 frivolous lawsuits against manufacturers, packers, distributors,
22 carriers, holders, sellers, marketers or advertisers of food
23 products that comply with applicable statutory and regulatory
24 requirements.

1 SECTION 41. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 35 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 As used in the Common Sense Consumption Act:

5 1. "Claim" means any claim by or on behalf of a natural person,
6 as well as any derivative or other claim arising therefrom asserted
7 by or on behalf of any other individual, corporation, company,
8 association, firm, partnership, society, joint-stock company, or any
9 other entity, including any governmental entity or governmental
10 officer, or private attorney;

11 2. "Generally known condition allegedly caused by or allegedly
12 likely to result from long-term consumption" means a condition
13 generally known to result or to likely result from the cumulative
14 effect of consumption, and not from a single instance of
15 consumption; and

16 3. "Knowing and willful violation" means that:

17 a. the conduct constituting the violation was committed
18 with the intent to deceive or injure consumers or with
19 actual knowledge that such conduct was injurious to
20 consumers, and

21 b. the conduct constituting the violation was not
22 required by regulations, orders, rules or other
23 pronouncement of, or any statute administered by, a
24 federal, state, or local government agency.

1 SECTION 42. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Except as provided in subsection B of this section, a
5 manufacturer, packer, distributor, carrier, holder, seller, marketer
6 or advertiser of a food, as defined in Section 201(f) of the Federal
7 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an
8 association of one or more such entities, shall not be subject to
9 civil liability arising under any law of this state, including all
10 statutes, regulations, rules, common law, public policies, court or
11 administrative decisions or decrees, or other state action having
12 the effect of law, for any claim arising out of weight gain,
13 obesity, a health condition associated with weight gain or obesity,
14 or other generally known condition allegedly caused by or allegedly
15 likely to result from long-term consumption of food.

16 B. Subsection A of this section shall not preclude civil
17 liability if the claim of weight gain, obesity, health condition
18 associated with weight gain or obesity, or other generally known
19 condition allegedly caused by or allegedly likely to result from
20 long-term consumption of food is based on:

21 1. A material violation of an adulteration or misbranding
22 requirement prescribed by statute or regulation of this state or the
23 United States of America and the claimed injury was proximately
24 caused by such violation; or

1 2. Any other material violation of federal or state law
2 applicable to the manufacturing, marketing, distribution,
3 advertising, labeling, or sale of food, provided that such violation
4 is knowing and willful, and the claimed injury was proximately
5 caused by such violation.

6 C. In any action exempted under paragraph 1 of subsection B of
7 this section, the complaint initiating such action shall state with
8 particularity the following: the statute, regulation or other law
9 of this state or of the United States that was allegedly violated;
10 the facts that are alleged to constitute a material violation of
11 such statute or regulation; and the facts alleged to demonstrate
12 that such violation proximately caused actual injury to the
13 plaintiff. In any action exempted under paragraph 2 of subsection B
14 of this section, in addition to the foregoing pleading requirements,
15 the complaint initiating such action shall state with particularity
16 facts sufficient to support a reasonable inference that the
17 violation was with intent to deceive or injure consumers or with the
18 actual knowledge that such violation was injurious to consumers.
19 For purposes of applying the Common Sense Consumption Act, the
20 foregoing pleading requirements are hereby deemed part of the
21 substantive law of this state and not merely in the nature of
22 procedural provisions.

23 D. In any action exempted under subsection B of this section,
24 all discovery and other proceedings shall be stayed during the

1 pendency of any motion to dismiss unless the court finds upon the
2 motion of any party that particularized discovery is necessary to
3 preserve evidence or to prevent undue prejudice to that party.
4 During the pendency of any stay of discovery pursuant to this
5 subsection, unless otherwise ordered by the court, any party to the
6 action with actual notice of the allegations contained in the
7 complaint shall treat all documents, data compilations, including
8 electronically recorded or stored data, and tangible objects that
9 are in the custody or control of such party and that are relevant to
10 the allegations, as if they were the subject of a continuing request
11 for production of documents from an opposing party under Section
12 3234 of Title 12 of the Oklahoma Statutes.

13 E. The provisions of the Common Sense Consumption Act shall
14 apply to all covered claims pending on November 1, 2009, and all
15 claims filed thereafter, regardless of when the claim arose.

16 SECTION 43. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 41 of Title 76, unless there is
18 created a duplication in numbering, reads as follows:

19 The Legislature finds that the unlawful use of firearms, rather
20 than their lawful manufacture, distribution, or sale, is the
21 proximate cause of any injury arising from their unlawful use.

22 SECTION 44. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 42 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 No firearm manufacturer, distributor, or seller who lawfully
2 manufactures, distributes, or sells a firearm is liable to any
3 person or entity, or to the estate, successors, or survivors of
4 either, for any injury suffered, including wrongful death and
5 property damage, because of use of such firearm by another.

6 SECTION 45. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 43 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

9 No association of persons who hold licenses under Section 923 of
10 Chapter 44 of Title 18, United States Code, as in effect on January
11 1, 1999, is liable to any person or entity, or to the estate,
12 successors or survivors of either, for any injury suffered,
13 including wrongful death and property damage, because of the use of
14 a firearm sold or manufactured by any licensee who is a member of
15 such association.

16 SECTION 46. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 44 of Title 76, unless there is
18 created a duplication in numbering, reads as follows:

19 The provisions of Sections 43 through 46 of this act do not
20 apply to actions for deceit, breach of contract, or expressed or
21 implied warranties, or for injuries resulting from failure of
22 firearms to operate in a normal or usual manner due to defects or
23 negligence in design or manufacture. The provisions of Sections 43
24 through 46 of this act do not apply to actions arising from the

1 unlawful sale or transfer of firearms, or to instances where the
2 transferor knew, or should have known, that the recipient would
3 engage in the unlawful sale or transfer of the firearm, or would
4 use, or purposely allow the use of, the firearm in an unlawful,
5 negligent, or improper fashion. For purposes of this section, the
6 potential of a firearm to cause serious injury, damage, or death as
7 a result of normal function does not constitute a defective
8 condition of the product. A firearm may not be deemed defective on
9 the basis of its potential to cause serious injury, damage, or death
10 when discharged.

11 SECTION 47. REPEALER 47 O.S. 2001, Section 12-420, as
12 amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008,
13 Section 12-420), is hereby repealed.

14 SECTION 48. REPEALER Section 6, Chapter 390, O.S.L.
15 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and
16 Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2008, Sections
17 1-1708.1F and 1-1708.1F-1), are hereby repealed.

18 SECTION 49. This act shall become effective November 1, 2009.
19

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